

25-37
No. 11963

Exhibits in Case No. 11963
of Clerk,

United States
Circuit Court of Appeals
for the Ninth Circuit

UNITED STATES OF AMERICA,

Appellant,

VS.

HERBERT A. JONES, JR.,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the District of Oregon

FILED

AUG 26 1948

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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record ing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	PAGE
Amended Complaint	20
Answer	18
Answer to Amended Complaint.....	28
Appeal:	
Certificate of Clerk to Transcript of Record on	48
Designation of Record on.....	43
Notice of	39
Order Extending Time for Filing Record on..	44
Order that Original Exhibits Need Not Be Printed on (CCA)	243
Order Transmitting Exhibits on (DC).....	45
Statement of Points on (DC).....	40
Statement of Points and Designation of Rec- ord on (CCA).....	241
Certificate of Clerk to Transcript of Record on Appeal	48

	PAGE
Complaint	2
Exhibit A—Circular—Special Offering C-286, Oct. 4, 1946, Surplus Government Property	7
Complaint, Amended	20
Designation of Record on Appeal (DC).....	43
Designation of Record for Printing, Statement of Points and (CCA).....	241
Docket Entries	45
Findings of Fact and Conclusions of Law.....	33
Judgment	38
Memorandum Opinion	33
Names and Addresses of Attorneys.....	1
Notice of Appeal.....	39
Opinion, Memorandum	33
Order Extending Time for Filing Record on Appeal	44
Order that Original Exhibits Need Not Be Printed (CCA)	243
Order Transmitting Exhibits (DC).....	45

	PAGE
Statement of Points on Appeal (DC).....	40
Statement of Points on Appeal and Designation of Record for Printing (CCA).....	241
Transcript of Testimony and Proceedings.....	50
Exhibits for Defendant:	
14—Deposition of William J. Burgoyne...	55
Set out at page.....	183
15—Deposition of Delbert W. Webb and Louis A. Zanon.....	55
Deposition of Delbert W. Webb—Set out at page.....	213
Deposition of Louis A. Zanon—Set out at page	230
Witnesses for Defendant:	
Anderson, Russell D.	
—direct	155
Jones, Herbert A., Jr.	
—direct	125
—cross	139
—redirect	151, 154
—recross	154
Mudge, C. T.	
—direct	158
—cross	162

Witnesses for Defendant—(Cont'd)

Paulson, John K.

—direct	166
—cross	168

Witnesses for Plaintiff:

Burgoyne, William J.

—direct	80
—cross	85
—redirect	92, 95, 97
—recross	93, 96

Givens, R. M.

—direct	51
—cross	62
—redirect	64
—recross	65

Mudge, C. T.

—rebuttal, direct	172
—cross	172

Webb, Delbert F.

—direct	65
—cross	71
—redirect	78
—recross	80

Zanon, Louis A.

—direct	109
—cross	118
—redirect	124

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United States Attorney;

VICTOR E. HARR and GENE B. CONKLIN,

Assistant United States Attorneys,

United States Court House,

Portland, Oregon,

For Appellant.

HICKS, DAVIS and TONGUE III,

Failing Building, Portland, Oregon,

For Appellee.

In the District Court of the United States
for the District of Oregon

No. Civ. 3916

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HERBERT A. JONES, JR.,

Defendant.

COMPLAINT

United States of America, by Henry L. Hess, United States Attorney for the District of Oregon, and Victor E. Harr, Assistant United States Attorney, states and declares:

1. This is a civil action brought by the United States and this Court has jurisdiction under 28 U. S. C., Section 41.

2. That during all times hereinafter named the United States Maritime Commission was and at all times has been an Agency of the United States of America, and during all times hereinafter named the War Assets Administration is an Agency of the United States of America duly established under Public Law 457 of the 78th Congress, entitled "Surplus Property Act of 1944", and that the War Assets Administration as a disposal agent was provided for in Executive Order 9689, issued by the President on January 31, 1946, and published in Federal Register.

3. That heretofore and on or about the . . . day of . . . , 1946, certain Universal Gear Joints, described as Lots No. 27, 28, 29 and 30 in Exhibit "A", hereto annexed and by this reference made a

part and parcel hereof, were, by the owning Agency, United States Maritime Commission, duly and legally declared surplus property to the War Assets Administration, which said War Assets Administration undertook to dispose of said surplus property in accordance with the aforesaid Act of Congress and the regulations and orders promulgated thereunder. [1*]

4. That thereafter and through inadvertance and mistake, the coding section of the War Assets Administration assumed that said Universal Gear Joints were automotive equipment and parts, and they were accordingly listed for disposition with the automotive section of the War Assets Administration, whereas, in truth and in fact, said equipment was designed by the manufacturer thereof as Industrial Machinery, and it was so used generally and was unsuited for and incapable of being used as automotive Universal Gears or for any other automotive purpose.

5. That it was the practice of the War Assets Administration to cause to be issued and circulated "Special Offerings" to the automotive trade and to interested veterans, who had placed their names of record, advertising any and all surplus equipment, machinery, accessories, etc., pertaining to and used in the said automotive trade, and inviting bids thereon.

6. That the said Universal Gears were, as aforesaid, together with other equipment and parts, thus

*Page numbering appearing at foot of page of original certified Transcript of Record.

advertised and circulated as aforesaid as "Special Offering, C-286", which is said Exhibit "A", attached hereto, and in which said special offering the aforesaid gears were fully and completely described; that because the same were not automotive parts or equipment, readily known by men with automotive knowledge and experience by reading the technical description thereof in the said special offering, no bids were received from veterans or from men engaged in the automotive business and trade.

7. After various items thus offered in Exhibit "A" were disposed of there remained a residue of unsold items, to-wit, the items described in Lots Nos. 1, 2, 3, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32.

8. That theretofore, and on or about the 30th day of October, 1946, defendant herein made an inquiry of an automotive salesman of the War Assets Administration, as to whether or not there were any Jeep Motors for sale at said time by the War Assets Administration. The said salesman, referring to the aforesaid residue, informed Defendant that there were available two Jeep Motors, but that to acquire same it would be necessary to purchase all of the items comprising the unsold residue of the aforesaid Exhibit "A". The Defendant, [2] thereupon, said he was not interested in acquiring anything other than the said Jeep Motors, but after considerable discussion, Defendant advised the said salesman that he would consider buying the unsold residue as aforesaid, if priced low enough; the said salesman then offered to sell all of said residual items to defendant for \$75. That Defendant offered

to buy said items at said price, and later paid said sum to the Cashier of War Assets Administration; that thereafter, Defendant took delivery of all of said items, except Lots Nos. 27, 28, 29 and 30, being the said Universal Gear Joints. That before delivery of said gears was made to Defendant, the United States Maritime Commission became aware of the gross inequitable sale and withdrew the said Universal Gears from the agency, War Assets Administration, and refused delivery of the said Universal Gears to Defendant; that, thereafter, the War Assets Administration and U. S. Maritime Commission refused delivery thereof to Defendant.

9. That the parties to the aforesaid transaction were mutually mistaken as to the nature and value of the Universal Gears, and there was an utter failure of meeting of minds in that neither plaintiff's agent nor defendant, at said time and place were familiar with the items then offered for sale and particularly were not familiar with the said gears; that they had never seen the said gears, were unfamiliar with the value thereof in that they both believed the gears were of insignificant value; that both were of the mistaken opinion that the gears were automotive parts, Whereas in truth and in fact, the said gears were Industrial Machinery and were unsuited for and incapable of being used in automobiles; and further, that said gears in fact at said time had a retail price of \$62,533.45 and that plaintiff theretofore had paid the said sum for said

gears, and that at the time of the aforesaid sale the gears had a scrap value of \$2,260.00.

10. That because of aforesaid, Plaintiff alleges that there was a total failure of meeting of minds; both Plaintiff and Defendant were mutually mistaken as to an essential fact, to-wit: the nature and value of said articles; and further to permit said sale to be consummated would result in gross inequity; [3] and plaintiff, therefore, alleges that said sale of Lots Nos. 27, 28, 29 and 30 should be vacated, set aside and rescinded, and that defendant should be reimbursed in the sum of \$69.13, the amount paid for said gears, which said amount has heretofore been tendered to defendant and by him rejected, and plaintiff therefore tenders the said sum into Court for defendant's use and benefit and plaintiff hereby consents that a decree be entered in favor of defendant and against plaintiff for said sum.

Wherefore, Plaintiff prays for a Decree of this Court to vacate, set aside and rescind the aforementioned sale of October 30, 1946, between Plaintiff and Defendant, and for its costs and disbursements herein incurred.

HENRY L. HESS,

United States Attorney for the
District of Oregon.

By /s/ VICTOR E. HARR,

Assistant United States Attorney. [4]

WAA 1101

EXHIBIT A

SURPLUS
GOVERNMENT
PROPERTY

SPECIAL OFFERING

For Sale By
WAR ASSETS
ADMINISTRATION

Portland Regional Office
P.O. Box 4062, Portland 8, Oregon

Special Offering No. C-286
4 October 1946

Regional Office Reference No.	Quantity	Description and Location	Condition or Price
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INVITATION TO BID

Sealed bids are invited for materials described on the following pages hereof. Bids will be considered for Entire Lots Only. No bids will be considered on single line items.

MATERIALS: SPARE PARTS, JEEP ENGINES, JACKS

LOCATION & INSPECTION: Contact the Surplus Property Officer at site, from 1:00 A.M. to 3:00 P.M. daily Monday through Friday. For further information contact Automotive and Machinery Sales Division, War Assets Building, Swan Island, Portland, Oregon, or phone TRinity 1121.

TIME AND PLACE OF BID OPENING: 3:00 P.M. (PST) October 24, 1946, War Assets Administration Building, Swan Island, Room 114, Portland, Oregon.

DEPOSIT: No deposit required with bid. Material listed in this offering is to be sold F.O.B. location.

SUBMISSION OF BIDS: Please use bid form attached, and mail all bids to P.O. Box 3714, Portland 8, Oregon. All bids must be signed and dated with name and address of bidder clearly shown on Bid Form. Sealed bids should be submitted in the enclosed self-addressed bid envelope with the attached Bid Form.

NOTE: Bids on Special Offering No. C-286 in order to be considered must be received in this office by 2 P.M. 24 October 1946. Any bid which is accepted will be subject to the terms and conditions on the reverse side of the Bid Form.

VETERANS OF WORLD WAR II: VETERANS MUST ENCLOSE THEIR CASE NUMBER OF FORMS 61, 63, or 73 WITH THEIR BIDS.

To help you in purchasing surplus property from the War Assets Administration, a Veterans Unit has been established in each of our Regional Offices.

Exhibit A—(Continued)

SPARE PARTS, JEEP ENGINES, JACKS—(Cont'd.)

Regional Office Reference No.	Quantity	Description and Location	Condition or Price
THIS SURPLUS PROPERTY IS BEING OFFERED TO PRIORITY CLAIMANTS INCLUDING VETERANS OF WORLD WAR II AND TO ALL OTHER BUYERS CONCURRENTLY. OFFERS TO BID WILL BE CONSIDERED IN ORDER OF THEIR PRIORITY. [5]			
		Location: Substation Warehouse Ampere, (Vancouver), Wash.	
		Inspection: Contact Custodian at location	
		Lot No. 1	
SO-C-286-1	1	Body, Dump Truck, 1½ yd. capacity, civilian type, Mfr. Isaacson, Ser. P5282299 (2411358-1-1) Used-Fair \$.....	
		Location: Warehouse No. 2 CIW Portland, Oregon	
		Inspection: Contact Custodian at location	
		Lot No. 2	
SO-C-286-2	12	Cock, Plug, Brass, 1½" lift ends, ser'd lubricated round port, straightway, trim-brass Mfr. A.C.F. SMR No. 83889 (223416-2-3) New-Good \$.....	
		Location: Motor Pool & Bldg. T-322 Fort Stevens, Ore.	
		Inspection: Contact Custodian at location	
		Lot No. 3	
SO-C-286-3	1	Engine Assembly, Jeep, Ford, 4 cyl., L head engine No. GPW-61064 SAE H.P. 15.6 actual H.P. 60, distributor cap, rotor, plug wires, & oil filter all missing. General condition fair. Tag No. 11708 (2725047-2-1) Used-Fair \$.....	
	1	Engine Assembly, Jeep, Ford, 4 cyl. L head no engine number SAE H.P. 15.6 actual H.P. 60. Pulley housing cracked & 1 bad bearing, no air filter. Tag No. 11709 (2725047-2-2) Used-Poor \$.....	
		Location: Kaiser Company, Inc. Swan Island, Portland, Oregon	
		Inspection: Contact Custodian at location	

Exhibit A—(Continued)

SPARE PARTS, JEEP ENGINES, JACKS—(Cont'd.)

Regional Office Reference No.	Quantity	Description and Location	Condition or Price
Lot No. 4			
SO-C-286-4	5	Jack, Journal, Low ht. ball bearing, screw type portable, hand operated, Cap. 35 tons. Ht. (closed) 10", rise: 5" Wt. 40 lbs. Purchased 1942 (Mar.)—New. Mfr. The Duff-Norton Mfg. Co. Model: 3510-C-1 MC 83186 (2725131-1-1)	Used-Fair \$.....
			[6]
Lot No. 5			
SO-C-286-5	81	Jack, Journal, Low ht. ball bearing, screw type portable, hand operated. Cap. 25 tons Ht. (closed) 10". rise: 5" Wt. 36 lbs. Purchased March 1942.—New. Mfr. The Duff-Norton Mfg. Co. Model: 2510-C-1 MC 83186 (2725131-1-2)	Used-Fair \$.....
Lot No. 6			
SO-C-286-6	6	Jack, Journal, Low height, ball bearing, screw type, portable, hand operated. Cap. 25 tons, Ht. (closed) 10"; rise: 5". Wt. 36 lbs. Purchased March 1942—new. Mfr. The Duff-Norton Mfg. Co. WO/Steel Handles. Unit Cost adjusted accordingly. Model 2510-C-1 (2725131-1-3)	Used-Fair \$.....
Lot No. 7			
SO-C-286-7	4	Jacks: Hydraulic, portable, hand operated. Cap. 50 tons. Dim. 9½"x10½"x12" high (closed) 5" rise. Wt. 82 lbs. Purchased: April 1942—new. Mfr. Pomeroy Engineering Co. Model 50 ton. MC 83186 (2725131-3-2)	Used-Poor \$.....

Exhibit A—(Continued)**SPARE PARTS, JEEP ENGINES, JACKS—(Cont'd.)**

Regional Office Reference No.	Quantity	Description and Location	Condition or Price
Lot No. 8			
SO-C-286-8	14	Jacks, Steamboat ratchet towing portable hand operated. Cap. 15 ton. Dim. (closed) 72", (Open) 116". 1 $\frac{3}{4}$ " dia. screw. Wt. 90 lbs. Purchased Feb. 1943—new. Mfr. Templeton Kenly & Co. Model L8-2 MC 83186 (2725131-3-1)	Used-Fair \$.....
Lot No. 9			
SO-C-286-9	96	Jacks, Push-pull, ratchet screw, portable, hand operated. Cap. 15 tons. Dim. (closed) 24" long operating length 18"; 2" dia. screw. Wt. 41 lbs. Purchased—Nov. 1942 new. Mfr. Templeton Kenly & Co. Model 1524. MC 83186 (2725131-2-5)	Used-Fair \$.....
Lot No. 10			
SO-C-286-10	5	Jacks, Push-pull, ratchet screw, portable, hand operated. Cap. 15 tons. Dim. (closed) 24" long, operating length, 18"; 2" dia. screw. Wt. 41 lbs. Purchased Nov. 1942 new. Mfr. Templeton Kenly & Co. Model 1524 W/O Steel handles. MC 83186 (2725131-2-6)	Used-Poor \$.....
Lot No. 11			
SO-C-286-11	19	Jack, Journal, low, ht. ball bearing, screw type, portable, hand operated. Cap. 15 tons. Height closed 10" rise: 5 $\frac{1}{2}$ ". Weight 30 lbs. Purchased Feb. 1942 new. Mfr. The Buda Co. Model 1510 MC 83186 (2725131-2-4)	Used-Poor \$.....
Lot No. 12			
SO-C-286-12	7	Jacks, Journal low height, ball bearing, screw type, portable, hand operated. Cap. 15 tons. Ht. (closed) 10". Rise 5 $\frac{1}{2}$ " Wt. 30 lbs. Purchased Feb. 1942 new. Mfr. The Buda Co., Model 1510 (2725131-2-3)	Used-Fair \$.....

[7]

Exhibit A—(Continued)

SPARE PARTS, JEEP ENGINES, JACKS—(Cont'd.)

Regional Office Reference No.	Quantity	Description and Location	Condition or Price
Lot No. 13			
SO-C-286-13	7	Jack, Journal, low height, ball bearing, screw type, portable, hand operated. Cap. 25 tons. Ht. (closed) 10" Rise: 5½" Wt. 36 lbs. Purchased Feb. 1942 Mfr. The Buda Co., Model 2510 MC 83186 (2725131-2-2)	Used-Poor \$.....
Lot No. 14			
SO-C-286-14	17	Jacks, Journal, low height, ball bearing, screw type, portable, hand operated. Cap. 25 tons ht. (closed) 10" rise: 5½" Wt. 36 lbs. Purchased Feb. 1942—new MC 83186 Mfr. The Buda Co. Model 2510 (2725131-2-1)	Used-Fair \$.....
Location: Columbia Metals Corp., Salem, Oregon Plancor 1864			
Inspection: Contact Custodian at location			
Lot No. 15			
SO-C-286-15	5	Jacks, Screw, Duff-Norton 25 ton., DPC 852159, 852160, 852161, 852162 & 852166 (918137-2-1)	Used-Fair \$.....
Lot No. 16			
SO-C-286-16	3	Jacks, Screw, Duff-Norton—50 ton. DPC 852144, 852147, 852149 (918137-2-3)	Used-Fair \$.....
Lot No. 17			
SO-C-286-17	6	Jacks, Screw, Duff-Norton—35 ton. DPC: 852151, 852152, 852153, 852154, 852156, 852157 (918137-2-2)	Used-Fair \$.....
[8]			
Location: Pendelton Army Air Field Hanger Bldg. Pendleton, Ore.			
Inspection: Contact Custodian at location			

Exhibit A—(Continued)

SPARE PARTS, JEEP ENGINES, JACKS—(Cont'd.)

Regional Office Reference No.	Quantity	Description and Location	Condition or Price
Lot No. 18			
SO-C-286-18	3	Jack, Airplane Tripod. Hydraulic Cap. 20,000 lbs. Min. Ht. 62" lift 18" approx. type W256 Ser. 571560, 372516, 481463. Mfr. Blackhawk Mfg. Co., Stock No. 8200-401000. (918019-2-2)	Used-Fair \$.....
Lot No. 19			
SO-C-286-19	2	Jack, Tripod Airplane Nose Type Hydraulic Cap. 20,000 lbs. Min. Ht. 66" lift 20" type W298 Ser. 375688, 575578. Mfr. Blackhawk Mfg. Co. Stk, No. 8200-421000 (918019-2-3)	Used-Fair \$.....
Lot No. 20			
SO-C-286-20	4	Jack, Tripod Airplane Hydraulic Cap. 20,000 lbs. Min. Ht. 7 ft. Lift Approx. 24". Type W262 Ser. 373673, 561010, 575178, 561123, Mfr. Blackhawk Mfg. Co. Stock No. 8200-389000. (918019-2-1)	Used-Fair \$.....
Lot No. 21			
SO-C-286-21	3	Jack, Extensions. Stk. No. 8200-243800 (918019-2-4)	Used-Fair \$.....
Lot No. 22			
SO-C-286-22	2	Jack, Airplane Tail, Hydraulic Type Solid base. w/12" extension Cap. 10,000 lbs. Min. Ht. 34" Type AC22406 Ser. 556249 (One nameplate missing). Mfr. Blackhawk Mfg. Co. Stk. No. 8200-395000 (918019-1-2)	Used-Fair \$.....

Location: Gunderson Bros. Eng. Corp.
4700 N. W. Front Ave.
Portland, Oregon

Inspection: Contact Custodian at location.

Exhibit A—(Continued)

SPARE PARTS, JEEP ENGINES, JACKS—(Cont'd.)

Regional Office Reference No.	Quantity	Description and Location	Condition or Price
Lot No. 23			
SO-C-286-23	104	King Pins for trailer hitch on 20 ton truck, Army parts No. 5231 7-5 (223728-2-1)	New-Good \$.....
			[9]
Location: Screw Mach. Products Co. 626 S. E. Stark St. Portland, Oregon			
Inspection: Contact Custodian at location			
Lot No. 24			
SO-C-286-24	3	Norgren Lubricator, Style No. 399 1b 2 (221144-1-8)	Used-Fair \$.....
Location: Kaiser Co., Inc., Vancouver, Washington			
Inspection: Contact Custodian at location			
Lot No. 25			
SO-C-286-25	3	Spare parts: For Allis Chalmers main circulating pump, each set consists of the following: (L-Rotating Element complete: 1 motor half coupling) 1-set screws: 20 $\frac{3}{4}$ "x3 $\frac{1}{4}$ " lg. studs w/nuts, 43 $\frac{3}{4}$ "x3 $\frac{1}{2}$ " lg. studs w/nuts: 1-set No. 811 packing; 6, $\frac{1}{2}$ " coupling bolts w/nuts & cotter pin. (2725019-2-2)	New-Good \$.....
Location: Oregon Shipbuilding Corp. Portland, Oregon.			
Inspection: Contact Custodian at location			
Lot No. 26			
SO-C-286-26	240	Gear: Miter. 2" P.D.—20 tooth. $\frac{3}{4}$ " bore, Hub 1 $\frac{5}{8}$ " O.D. x 1 $\frac{1}{4}$ " long. 9/16" face steel. Mfr. Boston Co., Fig. No. L-103 MC 80531 (223644-1-1)	New-Good \$.....

Exhibit A—(Continued)

SPARE PARTS, JEEP ENGINES, JACKS—(Cont'd.)

Regional Office Reference No.	Quantity	Description and Location	Condition or Price
Lot No. 27			
SO-C-286-27	199	Universal Gear Joint: Hinge type, shaft. C.I. Steel shafting. Br. Gears 1¼" shaft. Shaft connection 3" long. Operates from 0 to 92 degrees. Mfr. Piezo Electric Laboratories, Sim. to Brooks Eqpt. Corp., Model CHJ-Class B MC 80432	(223241-1-1) New-Good \$.....
Lot No. 28			
SO-C-286-28	2942	Universal Gear Joint: Hinge type, shaft. Made of brz. Stl. shafting 15/16" shaft connection 3⅛" lg. Operates from 0 to 92 degrees. Mfr. Bellingham Iron Works. Sim to Brooks Eqpt. Corp. Model CHJ Class A. MC 80433	(223242-1-1) New-Good \$.....
Lot No. 29			
SO-C-286-29	1655	Universal Gear Joint: hinge type, shaft. Made of brz. Steel shafting. 15/16" shaft, shafts connection 3⅛" long. Operates from 0 to 92 degrees. Mfr. United Engineering Co., Sim to Brooks Eqpt. Corp., Model CHJ Class A MC 80434	(223243-1-1) New-Good \$.....
Lot No. 30			
SO-C-286-30	28	Universal Joint: Hinged, gear. M.I. Housing w/2 grease fittings. Bronze ball & socket gears. Steel shafting. ¾"x3" long. Hinge range 0 to 92 degrees. Mfr. Piezo Electric Corp., Type LJ-100 Drwg-P 176. MC 80495	(223837-1-1) New-Good \$.....

[10]

Location: Camp Adair, Corvallis, Oregon
 Inspection: Contact Custodian at location

Exhibit A—(Continued)

SPARE PARTS, JEEP ENGINES, JACKS—(Cont'd.)

Regional Office Reference No.	Quantity	Description and Location	Condition or Price
Lot No. 31			
SO-C-286-31	1	Wagon, Chess, Trestle, M-1869. Military type. Mfr. Watson Wagon Co. Spec. wheels: wooden spokes and fellys. Front wheel 44" dia. w/4" steel tire. Axle 2½" sq. w/1⅞" round spindle. WB 116". Oak hounds w/ steel 5th wheel ¾"x2½"x37" dia. comp. w/front & rear bolsters, 144". Tongue w/hammer strap. Hand operated brake on rear wheels. Oak 3"x4⅜"x161½" rls. for frame. 18" std. rear wheels 56" dia. w/4 steel tire. (2417566-1-2) Used-Poor \$.....	
Lot No. 32			
SO-C-286-32	3	Wagon, Chess, Ponton, M-1869, Military type, Mfr. Watson Wagon Co. Spec. Wheels: wooden spokes and fellys. Front wheels 44" dia. w/4" steel tire, rear wheels 56" dia. w/4" steel tire. Axle 2½" sq. w/1⅞" round spindle. WB 116". Oak hounds w/ steel 5th wheel ¾"x2½"x37" dia. Comp. w/front & rear bolsters, 144" tongue w/hammer strap, hand operated brake on rear wheels, Oak 3"x4⅜"x16½" rails for frame. 10" standards. (2417566-1-1) Used-Poor \$.....	
Program No. P. G. 229			[11]

Exhibit A—(Continued)

WAR ASSETS ADMINISTRATION

War Assets Building
Swan Island, P.O. Box 3714
Portland 8, Oregon

BID

Date.....

In compliance with the enclosed invitation for bid, and subject to all the conditions thereof, the undersigned submits a bid of \$..... on the entire lot as listed. Mail all bids to War Assets Administration, P.O. Box 3714 Portland 8, Oregon.

(Name).....

(Street).....

(City and State).....

PLEASE ADD THIS INFORMATION

Type of Business:

Terms:

Destination ship to:

Via:

[12]

TERMS AND CONDITIONS OF SALE

War Assets Administration reserves the following rights in connection with the sale of surplus property:

- (a) To reject any and all bids and offers:
- (b) To withdraw all or any part of the property included in the sale at any time prior to a Contract of Sale; and
- (c) To reserve the right to require a deposit.

Prospective purchasers are urged to inspect property and arrangements for inspection may be made with the Regional Office of War Assets Administration.

CONDITIONS OF SALE

All property will be sold by War Assets Administration subject to the conditions described below.

The Sales Memorandum and these standard conditions of sale constitute the entire agreement between the parties with respect to the sale of the property specified in the Sales Memorandum. No variations from or modifications thereof, and no representations made or warranties given by any representative, agent, or employee of Seller in variance thereof shall be of any effect unless specified in writing and included in the Sales Memorandum. The standard conditions of sale are as follows:

- (a) Unless credit is provided for in the Sales Memorandum, payment must be made in currency, by the Purchaser's check, cashier's check, or money order prior to shipment of the property or its removal by Purchaser.

Exhibit A—(Continued)

(b) Seller makes no warranty, either express or implied, with respect to the property covered by the Sales Memorandum, except (a) Seller warrants it has the right to transfer title to the property; and (b) Seller warrants the accuracy of the description of the property, provided however, that if the property is described as new, Seller warrants only that it has not been used. Seller's liability under this paragraph shall not exceed amount of purchase price.

(c) Sales are subject to such adjustment upon the request of the Purchaser as the War Assets Administrator, or his authorized representative, in his sole discretion, may determine to be equitable under the circumstances, and any such determination shall be final. Requests for such adjustment will be considered only if filed in writing in the office of War Assets Administration responsible for the sale within fifteen (15) days (or such additional period as may be allowed in writing by the Administrator or such representative) after removal of property by Purchaser or delivery by a common carrier at the original destination.

(d) In case of error in the extension of prices, the unit price will govern.

(e) Unless otherwise specifically stated in the Sales Memorandum, all sales are made f.o.b. common carrier (cars or trucks) and shipping expenses will be paid by Purchaser. Specific shipping instructions from Purchaser must be received by the regional office of War Assets Administration responsible for the sale within ten (10) days from the date of the Sales Memorandum; or if prior to the expiration of said 10-day period Purchaser notifies Seller that he will remove the property, such removal must be effected within fifteen (15) days of the Sales Memorandum. Seller will not ship the property to more than one destination except in cases where such separate shipments each constitute a carload, truckload, or a minimum if established by WAA.

(f) If the property covered by Sales Memorandum is lost, damaged, or destroyed otherwise than by the fault or negligence of Purchaser prior to removal or shipment during the applicable period prescribed in paragraph (e) above for removal or the issuance of shipping instructions, Seller's liability shall, at election of Seller, be limited to the replacement of the property lost, damaged, or destroyed or refunding any amount paid by Purchaser therefor.

(g) If purchaser fails to issue shipping instructions or to remove the property within the applicable period prescribed in paragraph (e) above, the risk of loss, damage, or destruction of the property shall be upon Purchaser. In the event of such failure Purchaser shall, upon demand, pay to Seller reasonable storage charges if the property is stored on premises owned or controlled

Exhibit A—(Continued)

by the Government, or Seller may store the property elsewhere for the account and at the expense of Purchaser. Seller may also, upon such failure or in the event of default on the part of Purchaser in making payment or otherwise, upon giving ten (10) days written notice to Purchaser, rescind the sale, or resell the property for the account of Purchaser upon such terms and conditions as it deems proper, and Purchaser shall, upon demand, pay to Seller the amount of all losses and expenses incurred by reason of such failure or default. The exercise by Seller of one or more of the rights herein specified will not preclude Seller from exercising any other rights it may have against Purchaser.

(h) Seller shall not be liable for delay in shipping or loading the property covered by the Sales Memorandum due to causes beyond its control and without its fault or negligence, including without limitation, acts of God or the public enemy, acts or requests of any State or local governmental officer or agent purporting to act under authority, floods, fires, epidemics, quarantine restrictions, riots, sabotage, freight embargoes or failures, strikes, lock-outs, and disputes with workmen.

(i) Seller reserves the right to cancel the contract of sale without liability in cases where Purchaser is an agent acting for an undisclosed principal if such action is determined by the War Assets Administration in the public interest.

(j) No Member of, or Delegate to, Congress, or Resident Commissioner of the United States of America shall be admitted to any share or profit in the contract of sale or to any benefit that may arise therefrom unless it be made with a corporation for its general benefit.

[Endorsed]: Filed Sept. 26, 1947. [13]

[Title of District Court and Cause.]

ANSWER

Comes now the defendant and in answer to the complaint herein admits, denies and alleges as follows:

I.

Admits paragraphs I, II, III and VII.

II.

Denies paragraph IV.

III.

Admits paragraph V, except that defendant denies that it was the practice of the War Assets Administration to limit said "Special Offerings" to automotive equipment and parts or to the automotive trade.

IV.

In answer to paragraph VI, defendant admits that the Universal Joints described in said complaint, together with other equipment and parts, were advertised and circulated as "Special Offering, C-286", a copy of which is attached to said complaint, and which fully and completely described said gears, and that no bids were received for said Universal Joints, but denies each and every other allegation thereof.

V.

Admits paragraph VIII, except that the defendant denies that he said he was not interested in acquiring anything other than jeep motors, and denies that said sale was grossly inequitable and that the United States Maritime Commission did or could have withdrawn said Universal Joints from the War [14] Assets Administration after the same had been sold to defendant, as alleged in said paragraph.

VI.

Denies paragraph IX, except that defendant admits that he had not seen the particular gears in question; that at the time said gears were manufactured they had a retail price of \$62,533.45, and that at the time of the aforesaid sale said gears had a scrap value in excess of \$2,260.00.

VII.

Denies paragraph X, except that plaintiff has ten-

dered to defendant the sum of \$69.13 and that said tender has been rejected by defendant.

Wherefore, defendant prays that said complaint be dismissed and that defendant be allowed his costs and disbursements incurred herein.

HICKS, DAVIS & TONGUE,

By THOMAS H. TONGUE III,
Attorneys for Defendant.

[Endorsed]: Filed Oct. 15, 1947. [15]

[Title of District Court and Cause.]

AMENDED COMPLAINT

United States of America, by Henry L. Hess, United States Attorney for the District of Oregon, and Victor E. Harr, Assistant United States Attorney, for its first cause of suit alleges:

1. This is a civil action brought by the United States and this Court has jurisdiction under 28 U.S.C., Section 41.

2. That during all times hereinafter named the United States Maritime Commission was and at all times has been an Agency of the United States of America, and during all times hereinafter named the War Assets Administration is an Agency of the United States of America duly established under Public Law 457 of the 78th Congress, entitled "Surplus Property Act of 1944", and that the War Assets Administration as a disposal agent was provided for in Executive Order 9689, issued by the

President on January 31, 1946, and published in Federal Register.

3. That heretofore and on or about the.....day of, 1946, certain Universal Gear Joints, described as Lots No. 27, 28, 29 and 30 in Exhibit "A", hereto annexed and by this reference made a part and parcel hereof, were, by the owning Agency, United States Maritime Commission, duly and legally declared surplus property to the War Assets Administration, which said War Assets Administration undertook to dispose of said surplus property in accordance with the aforesaid Act of Congress and the regulations and orders promulgated thereunder. [16]

4. That thereafter and through inadvertance and mistake, the coding section of the War Assets Administration assumed that said Universal Gear Joints were automotive equipment and parts, and they were accordingly listed for disposition with the automotive section of the War Assets Administration, whereas, in truth and in fact, said equipment was designed by the manufacturer thereof as Industrial Machinery, and it was so used generally and was unsuited for and incapable of being used as automotive Universal Gears or for any other automotive purpose.

5. That it was the practice of the War Assets Administration to cause to be issued and circulated "Special Offerings" to the automotive trade and to interested veterans, who had placed their names of record, advertising any and all surplus equipment, machinery, accessories, etc., pertaining to and used

in the said automotive trade, and inviting bids thereon.

6. That the said Universal Gears were, as aforesaid, together with other equipment and parts, thus advertised and circulated as aforesaid as "Special Offering, C-286", which is said Exhibit "A", attached hereto, and in which said special offering the aforesaid gears were fully and completely described; that because the same were not automotive parts or equipment, readily known by men with automotive knowledge and experience by reading the technical description thereof in the said special offering, no bids were received from veterans or from men engaged in the automotive business and trade.

7. After various items thus offered in Exhibit "A" were disposed of there remained a residue of unsold items, to-wit, the items described in Lots Nos. 1, 2, 3, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32.

8. That theretofore, and on or about the 30th day of October, 1946, defendant herein made an inquiry of an automotive salesman of the War Assets Administration, as to whether or not there were any Jeep Motors for sale at said time by the War Assets Administration. The said salesman, referring to the aforesaid residue, informed Defendant that there were available two Jeep Motors, but that to acquire same it would be necessary to purchase all of the items comprising the unsold residue of the aforesaid Exhibit "A". The Defendant, [17] thereupon, said he was not interested in acquiring anything other than the said Jeep Motors, but after consider-

able discussion, Defendant advised the said salesman that he would consider buying the unsold residue as aforesaid, if priced low enough; the said salesman then offered to sell all of said residual items to defendant for \$75. That Defendant offered to buy said items at said price, and later paid said sum to the Cashier of War Assets Administration; that thereafter, Defendant took delivery of all of said items, except Lots Nos. 27, 28, 29 and 30, being the said Universal Gear Joints. That before delivery said said gears was made to Defendant, the United States Maritime Commisison became aware of the gross inequitable sale and withdrew the said Universal Gears from the agency, War Assets Administration, and refused delivery of the said Universal Gears to Defendant; that, thereafter, the War Assets Administration and U. S. Maritime Commission refused delivery thereof to Defendant.

9. That the parties to the aforesaid transaction were mutually mistaken as to the nature and value of the Universal Gears, and there was an utter failure of meeting of minds in that neither plaintiff's agent nor defendant, at said time and place were familiar with the items then offered for sale and particularly were not familiar with the said gears; that they had never seen the said gears, were unfamiliar with the value thereof in that they both believed the gears were of insignificant value; that both were of the mistaken opinion that the gears were automotive parts, Whereas in truth and in fact, the said gears were Industrial Machinery and were unsuited for and incapable of being used in

automobiles; and further, that said gears in fact at said time had a retail price of \$62,533.45 and that plaintiff theretofore had paid the said sum for said gears, and that at the time of the aforesaid sale the gears had a scrap value of \$2,260.00.

10. That because of aforesaid, Plaintiff alleges that there was a total failure of meeting of minds; both Plaintiff and Defendant were mutually mistaken as to an essential fact, to-wit: the nature and value of said articles; and further to permit said sale to be consummated would result in gross inequity; [18] and plaintiff, therefore, alleges that said sale of Lots Nos. 27, 28, 29 and 30 should be vacated, set aside and rescinded, and that defendant should be reimbursed in the sum of \$69.13, the amount paid for said gears, which said amount has heretofore been tendered to defendant and by him rejected, and plaintiff therefore tenders the said sum into Court for defendant's use and benefit and plaintiff hereby consents that a decree be entered in favor of defendant and against plaintiff for said sum.

Plaintiff for its second cause of suit incorporates Paragraphs 1, 2, 3, 4, 5, 6, 7, 8 of the first cause of suit and alleges:

1. That Complaint's agent was mistaken as to basic elements of the purported sale, to-wit: the nature and value of said Universal Gear Joints at said time and place; that there was an utter failure of meeting of minds in that Plaintiff's agent, at said time and place, was unfamiliar with the items then offered for sale and particularly was not familiar

with said Universal Gear Joints; that the Plaintiff's agent mistakenly believed the Universal Gear Joints were of insignificant value; that the Plaintiff's agent was of the mistaken opinion that the gears or that the said Universal Gear Joints were automotive parts; Whereas in fact, the said Universal Gear Joints were unsuited or incapable of being used in automobiles; and further, that said Universal Gear Joints, in fact, at said time had a retail price and declared value of \$62,533.45 and that the Plaintiff theretofore had paid that sum for the said Universal Gear Joints, and that at said time of the purported sale the Universal Gear Joints had a scrap value of \$2,260.00.

2. That the Defendant at the time of the purported sale had full knowledge of the nature and value of the said Universal Gear Joints; that the Defendant knew at the time of said purported sale that the Plaintiff's agent was mistaken as to the nature and value of the said Universal Gear Joints; that the Defendant knew of the gross inequity of the purchase price of the said Universal Gear Joints; that the Defendant represented to the Plaintiff's agent that the Defendant knew that the Universal Gear Joints were practically valueless; and that the Plaintiff's agent was misled by the Defendant during the negotiations of the purported sale which would result in gross inequity [19] and hardship to the Plaintiff if the said purported sale were enforceable.

3. Plaintiff alleges that Plaintiff was mistaken as to an essential fact; that there was no meeting of the minds; that the apportioned purchase price

of the said Universal Gear Joints of the sum of \$69.13 has been tendered to the Defendant and rejected by him; that the tender of the full purchase price of said purported sale at all times would have been, and would now be, futile; and that to permit the purported sale to become consummated would result in gross inequity and hardship to the Plaintiff.

Plaintiff for its third cause of suit incorporates Paragraphs 1, 2, 3, 4, 5, 6, 7 and 8 of the first cause of suit and alleges:

1. That the agent or agents of the Plaintiff who dealt with the Defendant in the aforesaid transaction completing the purported sale had no authority to sell said Universal Gear Joints and that said sale was void ab initio; and that the acts of the Plaintiff's agent in making such purported sale were ultra vires and do not bind the United States of America.

Plaintiff for fourth cause of suit incorporates Paragraphs 1, 2, 3, 4, 5, 6, 7 and 8 of the first cause of suit and alleges:

1. That the retail price and declared value of said Universal Gear Joints were at the time of said purported sale \$62,533.45 and the scrap value was \$2,260.00; that the apportioned purchase price of said Universal Gear Joints was \$69.13; that such price was unfair and grossly inadequate; and that the Congress had delegated to no agent authority to sell said goods at such an unfair and inequitable price and that the purported sale was void ab initio.

2. That the purported sale is void in that there was no compliance by Plaintiff's agents with the

provisions of the Surplus Property Act of 1944 and that such acts of the Plaintiff's agent in making the purported sale were ultra vires and did not bind the United States of America.

Wherefore, Plaintiff prays; (1) that a decree be rendered declaring the purported sale to be void and Plaintiff to be the owner of the aforementioned property purported to have been sold to the Defendant. (2) That a Decree be rendered to vacate, set aside, and rescind the aforementioned [20] purported sale. (3) For a declaration of the rights and duties of the party hereto under and by virtue of any agreement arising under the aforementioned transactions between the Plaintiff's agent or agents and the Defendant. (4) For such other relief as the Court may seem just in the premises. (5) For cost and disbursements by Plaintiff herein.

HENRY L. HESS,

United States Attorney for the
District of Oregon

By /s/ GENE B. CONKLIN,

Assistant United States Attorney.

United States of America,

District of Oregon—ss.

Due service of the within complaint is hereby accepted at Portland, Multnomah County, Oregon, this 4th day of December, 1947, by receiving a copy thereof duly certified as such by.....of Attorneys for Herbert A. Jones, Jr.

/s/ EDWIN D. HICKS,

Of Attorneys for Herbert A. Jones, Jr.

[Endorsed]: Filed December 4, 1947. [21]

[Title of District Court and Cause.]

ANSWER TO AMENDED COMPLAINT

Comes now the defendant and in answer to the amended complaint herein, admits, denies and alleges as follows:

I.

Admits paragraphs I, II, III, and VII.

II.

Denies paragraph IV.

III.

Admits paragraph V, except that defendant denies that it was the practice of the War Assets Administration to limit said "Special Offerings" to automotive equipment and parts or to the automotive trade, and alleges that said Special Offerings, and particularly Special Offering C-286, were issued and circulated, among others, to persons engaged in the purchase, sale and use of hardware, heavy equipment and machinery, and to persons engaged in the purchase and sale of metals for scrap.

IV.

In answer to paragraph VI, defendant admits that the Universal Joints described in said complaint, together with other equipment and parts, were advertised and circulated as "Special Offering C-286", a copy of which it attached to said complaint, and which fully and completely described said gears, and that no bids were received for said Universal Joints, but denies each and every other allegation thereof.

V.

Admits paragraph VIII, except that defendant denies [22] that he was told or knew that the salesman to whom he was referred was an automotive salesman; that he said he was not interested in acquiring anything other than jeep motors, and denies that said sale was grossly inequitable and that the United States Maritime Commission did or could have withdrawn said Universal Joints from the War Assets Administration after the same had been sold to the defendant, as alleged in said paragraph; and alleges that said salesman showed the defendant the description of said Universal Gear Joints, as set forth in Special Offering, C-286, informed defendant that said joints were left over from the shipbuilding program at the shipyard of the Oregon Shipbuilding Corporation in Portland, Oregon, and that it might be possible to sell the same to other shipyards still in active operation.

VI.

Denies paragraph IX, except that defendant admits that he had not seen the particular gears in question; that at the time said gears were manufactured they had a retail value of \$62,533.45, and that at the time of the aforesaid sale said gears had a scrap value in excess of \$2,260.00, but alleges that he was at that time familiar with the nature and value of the gears described in said Special Offering, and that there was no mutual mistake as alleged in said paragraph IX.

VII.

Denies paragraph X, except that at or about the

time of serving and filing the complaint herein plaintiff tendered to defendant the sum of \$69.13 and that said tender was rejected by defendant.

In answer to plaintiff's second cause of suit, defendant denies the same and each and every allegation thereof except as admitted or alleged in answer to plaintiff's first cause of suit, and alleges that both plaintiff and defendant knew of the nature and value of said Universal Gear Joints; that there was no mistake [23] of any essential fact by either party; that if there was any mistake by plaintiff's agents, such mistake was solely the result of their negligence and not otherwise; that there was no failure of meeting of the minds, and that the purchase price fixed by plaintiff and paid by defendant for said Universal Gear Joints, in proportion to the original purchase price and the scrap value of said goods, was wholly in accordance with the custom and practice theretofore established, followed and approved by said War Assets Administration and that, therefore, plaintiff is estopped from alleging that said sale would result in a gross inequity and hardship.

In answer to plaintiff's **third and fourth** causes of suit, defendant denies the same and each and every allegation thereof except as admitted or alleged in answer to plaintiff's first and second cause of suit, and expressly denies that plaintiff's agents who authorized, consummated and approved said transaction had no authority to sell said joints, and alleges that said sale was ratified and approved by plaintiff, that defendant was a bona fide purchaser

for value, and that after plaintiff, through the War Assets Administration, consummated said sale and delivered sales documents form WAA-1a to defendant, plaintiff is barred and estopped from alleging that said sale was void or ultra vires or that said sale did not otherwise comply with the provisions of said Act.

For further, separate and affirmative defense, defendant alleges that all of the facts as to the nature and value of said Universal Gear Joints were fully available to both parties at the time of said sale; that thereafter, with full knowledge of said facts, plaintiff's agents, acting with apparent and actual authority, accepted payment by defendant, issued Sales Documents purporting to transfer to defendant title to said joints and delivered to defendant all of the items covered by said sale other than said Universal Gear Joints; that at the time of said sale defendant was a bona fide purchaser of said [24] goods for a valuable consideration and without notice of any alleged mistake or lack of authority on the part of plaintiff's representatives, or of their right to rescind said sale; that upon the institution by defendant of legal proceedings to recover possession of said Universal Gear Joints, plaintiff twice moved said joints out of the State with intent to defeat the jurisdiction of the court in which said proceedings were instituted; that plaintiff took no action to rescind said sale or to restore defendant to the status quo until the filing of the complaint herein on or about September 26, 1947, at which time plaintiff offered to return to defendant the sum of \$69.13 for said Universal Gear Joints, but

has at all times and does still retain the benefit of and proceeds from the sale of all other items included in said sale of October 30, 1946, and from the sale of all other items included in Special Offering N.C. 286; that the War Assets Administration in the Portland area has established a custom and practice of disposing of surplus war commodities at a small fraction of their original cost price when unsuccessful over a period of time in selling goods at more substantial prices; that the sale of said Universal Gear Joints was wholly in accordance with said established custom and practice; that defendant has been seriously prejudiced by the long delay in withholding delivery of said joints and the attempted rescission of said sale; and that under the facts of this case plaintiff is barred and estopped from seeking to rescind the sale of said Universal Gear Joints, or from alleging lack of authority to make said sale.

Wherefore, defendant prays that plaintiff take nothing by its complaint; that the same be dismissed; that said sale be held valid and binding in all respects; that defendant be declared the owner of said Universal Gear Joints and that defendant be allowed his costs and disbursements herein.

HICKS, DAVIS AND TONGUE,
THOMAS H. TONGUE, III,
Attorneys for Defendant.

Service Accepted December 15, 1947.

/s/ GENE B. CONKLIN,
Asst. U. S. Attorney.

[Endorsed]: Filed Dec. 18, 1947. [25]

[Title of District Court and Cause.]

MEMORANDUM OPINION

Seeking to avoid the difficulties attendant on rescission of a sale of personal property, where partial delivery has been made, the plaintiff insists that this contract is severable. But it is not severable. On the contrary, it was a sale by lot, and the seller insisted that it be that way. The relief sought is, therefore, denied.

Dated February 20, 1948.

CLAUDE McCOLLOCH,
Judge.

[Endorsed]: Filed Feb. 20, 1948. [26]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above entitled cause came on regularly for trial on the 22nd day of December 1947, before the Court sitting without a jury, Henry L. Hess, United States Attorney, and Victor E. Harr and Gene B. Conklin, Assistant United States Attorneys, appearing as counsel for plaintiff and Thomas H. Tongue and Neal W. Bush appearing as counsel for defendant, and the Court having heard the testimony and having examined the evidence offered by both parties and the cause having been submitted to the Court for decision and the court, having con-

sidered written memoranda and oral arguments submitted by both parties and being advised in the premises, now makes its findings of fact and conclusions of law as follows:

FINDINGS OF FACT

I.

On or about October 4th, 1946, the plaintiff, through the War Assets Administration, an agency of plaintiff, issued a written invitation for bids upon various items of surplus property and mailed the same to 4723 dealers, including dealers in hardware, equipment and scrap metals. No bids were submitted upon 4824 universal gear joints and various other items, all of which remained as a residue. Said War Assets Administration then issued directions that this residue be placed on sale at the best price offered; and a reasonable test of the market had been made by plaintiff before said goods were sold to defendant. [27]

II.

On or about October 30, 1946, defendant was informed by said War Assets Administration of the foregoing facts and was offered the sale of said residue for the sum of \$75. Defendant was shown by said War Assets Administration a complete and accurate description of all of the items of said residue. Both plaintiff, its agents and defendant were familiar with the nature of said items. There is no substantial evidence to establish the value of said items at the time of said sale other than that the

value of said items, and in particular of said universal gear joints, was substantial, but that the exact value of said goods was questionable and speculative, which said facts were recognized both by plaintiff, its agents and defendant and all of said negotiations, including the determination of said price and their subsequent sale, were the deliberate and intentional acts of plaintiff, its agents, and defendant, and the means of information as to the value of said goods were open alike to all of said parties.

III.

No mistake was made by either plaintiff, its agents, or defendant as to the identity, nature or value of said items, including said gear joints, nor was there any mistake that determined the conduct of either plaintiff, its agents, or defendant, nor did defendant have any knowledge or reason to know that plaintiff or its agents made any such mistake or lacked authority to make said sales. No representation or fraudulent act or inducement, either actual or constructive, was made or engaged in by defendant and defendant acted in good faith at all times. Nor is there any evidence that plaintiff or its agents were misled by defendant in any way from any act, inducement or representation by defendant and there was no concealment of facts or imposition.

IV.

On said date defendant accepted said offer and tendered and paid [28] the sum of \$75. to plaintiff, which said tender was accepted and said sale

at said price was then authorized by an agent of the War Assets Administration. Thereafter, on November 6th, 1946, a bill of sale was executed and delivered to defendant by and on behalf of said War Assets Administration purporting to transfer title of all items of personal property, including said universal gear joints, to defendant and warranting that plaintiff and its agents had the right to sell said goods to defendant. Thereafter, and continuing from November 9 to 13, 1946, plaintiff delivered to defendant all of said items other than said universal gear joints, but on November 12, 1946, refused to deliver said joints, although continuing thereafter to deliver other items to defendant.

V.

On December 28, 1946, defendant filed an action for replevin in the Circuit Court for the State of Oregon for Multnomah County against the regional director of said War Assets Administration and the custodian of said goods. Said goods were then immediately moved by plaintiff's agents to the State of Washington under the custody of a resident of Oregon and upon joining said custodian as a party defendant said goods were immediately moved again to a military reservation in the State of Washington.

VI.

On or about September 26, 1947, plaintiff filed a complaint herein seeking to rescind said sale as to said Universal Gear Joints alone on the ground of mutual mistake and upon the ground that said gears

had been withdrawn by their owning agency, but did not seek to rescind said sale as to any of the other items included therein. Said sale was not severable, but by choice of plaintiff all of said items were sold as a single lot. At the time of filing said complaint plaintiff tendered to defendant the apportioned purchase price paid for said gear joints, which said tender was rejected by defendant. On December 4, 1947, plaintiff filed an [29] amended complaint seeking to rescind said entire sale on the ground of mistake, both mutual and unilateral, and lack of authority to make such a sale. Plaintiff has not tendered the balance of the purchase price paid for said other items and it has not been shown that defendant still is in possession of said items; that it would be possible to restore the status quo or that defendant would not be prejudiced by the course of action suggested by plaintiff in its amended complaint herein.

VII.

Substantial evidence was introduced to establish that it was the custom and practice of said War Assets Administration, when goods could not or were not sold on a bid or fixed price basis for a substantial recovery, to offer said goods for sale on a negotiated basis for the best price offered. Substantial evidence was also introduced to establish that the foregoing sale was in accordance with said custom and practice.

CONCLUSIONS OF LAW

Plaintiff is not entitled to rescind said sale or to

the other relief prayed for by plaintiff herein, and the action shall be dismissed for want of equity.

Dated this 1st day of March, 1948.

/s/ CLAUDE McCOLLOCH,
U. S. District Judge.

Copy Rec'd 2/24/48.

/s/ VICTOR E. HARR.

[Endorsed]: Filed March 1, 1948. [30]

In the District Court of the United States for the
District of Oregon

Civil 3916

UNITED STATES OF AMERICA,

Plaintiff,

v.

HERBERT A. JONES, JR.,

Defendant.

JUDGMENT

The above entitled cause having duly come on for trial on December 22, 1947, before the Court sitting without a jury, the parties hereto being represented by their respective attorneys of record herein, and the Court, after hearing the evidence and having considered written memoranda and oral arguments submitted by both parties, and being advised in the premises, and having made its findings of fact and conclusions of law herein; Now,

therefore, based upon said findings and conclusions, it is hereby

Ordered, adjudged and decreed that judgment be and the same is hereby entered in favor of defendant herein and plaintiff's complaint herein shall be and the same is hereby dismissed.

Dated this 4th day of March, 1948.

CLAUDE McCOLLOCH,
U. S. District Judge.

Judgment entered Mar. 4, 1948.

[Endorsed]: Filed Mar. 4, 1948. [31]

[Title of District Court and Cause.]

NOTICE OF APPEAL TO CIRCUIT COURT
OF APPEALS

Notice is hereby given that the United States of America, plaintiff above named, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the final judgment entered in this action on the 4th day of March, 1948 in favor of the defendant and dismissing plaintiff's complaint.

Dated this 30th day of April, 1948.

HENRY L. HESS,
United States Attorney
for the District of Oregon.
/s/ GENE B. CONKLIN,
Assistant United States Attorney.

[Endorsed]: Filed April 30, 1948. [32]

[Title of District Court and Cause.]

STATEMENT OF POINTS ON WHICH
PLAINTIFF INTENDS TO RELY
ON APPEAL

The plaintiff, having taken appeal to the U. S. Circuit Court of Appeals for the Ninth Circuit, from the Judgment rendered by the District Court of the United States for the District of Oregon, hereby designates the following points to be relied on in the prosecution of said appeal:

I.

The District Court erred in making Findings of Fact insufficient to resolve any of the issues raised in the pleadings and pre-trial order and tried.

II.

The District Court erred in making Findings of Fact which do not support its Conclusions of Law.

III.

The District Court erred in dismissing the action for want of equity.

IV.

The District Court erred in holding and concluding the plaintiff not entitled to the relief prayed for.

V.

The District Court erred in holding and concluding the plaintiff not entitled "to rescind said sale".

VI.

The District Court erred in holding and concluding, if it so held and concluded, that the transaction between the defendant and the plaintiff's [33] agents resulted in a valid sale.

VII.

The District Court erred in holding and concluding that the plaintiff was not entitled to a decree declaring the right and duties of the defendant and the plaintiff under and by virtue of any agreement arising under transactions between defendant and plaintiff's agent or agents.

VIII.

The District Court erred in holding and concluding that the plaintiff was not entitled to a declaration by the Court that the purported sale be void and the plaintiff owner of the property purportedly to have been sold.

IX.

The District Court erred in holding and concluding that the plaintiff was not entitled to a decree by the Court vacating, setting aside and rescinding the purported sale between the defendant and the plaintiff.

X.

The District Court erred in making Findings of

Fact and Conclusions of Law which do not clearly show basis for the decision.

Dated this 2nd day of June, 1948, at Portland, Oregon.

HENRY L. HESS,
United States Attorney
for the District of Oregon.

/s/ GENE B. CONKLIN,
Assistant United States Attorney.

United States of America,
District of Oregon—ss.

I, Gene B. Conklin, Assistant United States Attorney for the District of Oregon, hereby certify that I have made service upon the defendant of the foregoing Statements of Points on Which Plaintiff Intends to Rely on Appeal by depositing in the United States Post Office at Portland, Oregon, on the 2nd day of June, 1948, a duly certified copy thereof, enclosed in an envelope, with postage thereon prepaid, addressed to Mr. Thomas H. Tongue III, Yeon Building, Portland 4, Oregon, attorney of record for defendant.

/s/ GENE B. CONKLIN.

[Endorsed]: Filed June 2, 1948. [34]

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF RECORD
ON APPEAL

To the Clerk of the District Court of the United
States for the District of Oregon:

Plaintiff, United States of America, hereby designates that portion of the record in this case to be contained in the record on appeal which is described as follows:

1. All pleadings.
2. Pre-Trial Order.
3. Transcript of proceedings of the trial.
4. Order to send all trial exhibits.
5. Memorandum of Opinion.
6. Findings of Fact and Conclusions of Law.
7. Judgment.
8. Notice of Appeal to the Circuit Court of Appeals.
9. Statement of Points on which Plaintiff Intends to Rely on Appeal.
10. This designation.

Dated this 2nd day of June, 1948, at Portland, Oregon.

HENRY L. HESS,

United States Attorney for the
District of Oregon.

/s/ GENE B. CONKLIN,

Assistant United States Attorney.

[Endorsed]: Filed June 2, 1948. [35]

United States of America,
District of Oregon—ss.

I, Gene B. Conklin, Assistant United States Attorney for the District of Oregon, hereby certify that I have made service upon the defendant of the foregoing Designation of Contents of Record on Appeal by depositing in the United States Post Office at Portland, Oregon, on the 2nd day of June, 1948, a duly certified copy thereof, enclosed in an envelope, with postage thereon prepaid addressed to Mr. Thomas H. Tongue, III, Yeon Building, Portland 4, Oregon, attorney of record for defendant.

/s/ GENE B. CONKLIN,
Of Attorneys for Plaintiff. [36]

[Title of District Court and Cause.]

ORDER

This matter coming on to be heard ex parte this day upon motion of plaintiff, through its attorneys, Henry L. Hess, United States Attorney for the District of Oregon, and Gene B. Conklin, Assistant United States Attorney, for an order extending time for the filing of the record on appeal and docketing the within action in the Circuit Court of Appeals, and the Court being fully advised in the premises,

It is ordered that the time for filing the within appeal and docketing the action be, and it is hereby extended to seventy days from the first date of the Notice of Appeal.

Made and entered at Portland, Oregon, this 3rd day of June, 1948.

CLAUDE McCOLLOCH,
Judge.

[Endorsed]: Filed June 3, 1948. [37]

[Title of District Court and Cause.]

ORDER TRANSMITTING EXHIBITS

On motion of plaintiff and appellant herein, and good cause appearing therefor, it is hereby

Ordered that all of the exhibits in the above case be transmitted to the Circuit Court of Appeals, in connection with the appeal in this case.

Dated this 11th day of June, 1948, at Portland, Oregon.

CLAUDE McCOLLOCH,
Judge.

[Endorsed]: Filed June 11, 1948. [38]

[Title of District Court and Cause.]

DOCKET ENTRIES

1947

Sept. 26	Filed Complaint.
Sept. 26	Issued summons—to marshal.
Oct. 1	Filed summons with return.
Oct. 15	Filed answer.
Nov. 3	Filed deposition of William J. Burgoyne.
Nov. 10	Entered order setting for pre-trial Nov. 24. Fee.
Nov. 24	Record of pre-trial conference & order allowing U. S. to amend complaint. McC.
Dec. 4	Filed Amended Complaint.

1947 Docket Entries—(Continued)

- Dec. 15 Entered order setting for trial on Monday Dec. 22, 1947 at 1:30 p.m. McC.
- Dec. 18 Filed praecipe, U. S. for subpoenas.
- Dec. 18 Issued subpoenas—to marshal.
- Dec. 18 Filed Depositions of Delbert F. Webb & Louis A. Zaron.
- Dec. 18 Filed Answer to Amended Complaint.
- Dec. 19 Filed Motion for subpoena duces tecum.
- Dec. 19 Filed & entered order for subpoena duces tecum. McC.
- Dec. 19 Issued subpoena duces tecum—to marshal.
- Dec. 19 Issued subpoena & 1 copy to Atty. Tongue.
- Dec. 19 Filed (3) subpoenas with returns.
- Dec. 19 Filed Subpoena Duces Tecum with return.
- Dec. 20 Filed motion for issuance of subpoena duces tecum.
- Dec. 20 Filed & entered order for issuance of subpoena duces tecum. McC.
- Dec. 22 Issued subpoenas duces tecum—to marshal.
- Dec. 22 Record of trial before court & entered order allowing deft. 3 weeks to file brief; ptff. 3 weeks to answer & order that deft. may file reply. McC.
- Dec. 23 Filed subpoena duces tecum.
- Dec. 26 Filed trial exhibits 1, 2a to d, 3a to I, 4a to I, 5, 6a to e, 9, 10, 11a to I, 12a to I, and 13 to 18.

- 1948 Docket Entries—(Continued)
- Jan. 12 Filed defendants memorandum.
- Feb. 2 Entered order allowing ptff to Feb. 6, 1948 to file brief. McC.
- Feb. 2 Filed motion & stipulation for order restoring of property.
- Feb. 2 Filed & entered order restoring of property. McC.
- Feb. 7 Filed Plaintiff's Memorandum.
- Feb. 9 Entered order granting until Friday, Feb. 13 to file Deft's. brief. McC.
- Feb. 11 Entered order setting for oral argument on Feb. 16, 1948. McC.
- Feb. 13 Filed ptff's. reply memorandum.
- Feb. 16 Record of argument on the merits & order taking under advisement. McC.
- Feb. 20 Filed memorandum opinion. McC.
- Mar. 1 Filed & entered Findings of Fact & Conclusions of Law. McC.
- Mar. 1 Record of hearing in settlement of Findings. McC.
- Mar. 4 Filed & entered judgment dismissing complaint. McC.
- Apr. 19 Filed Transcript of Proceedings Dec. 22, 1947.
- Apr. 30 Filed notice of appeal to C. C. A.
- May 3 Mailed copy of notice of appeal to Hicks, Davis & Tongue.

1948 Docket Entries—(Continued)

June 2 Filed statement of points.

June 2 Filed designation of contents of record.

June 3 Filed & entered order extending to 70
days from date 1st notice of appeal time
for filing appeal & docketing. McC.

June 11 Filed & entered order transmitting ex-
hibits.

June 11 Pre-trial order submitted. (Not signed.)

United States of America,
District of Oregon—ss.

CERTIFICATE OF CLERK

I, Lowell Mundorff, Clerk of the District Court of the United States for the District of Oregon, do hereby certify that the foregoing pages numbered 1 to 40 inclusive constitute the transcript of record on appeal from a judgment of said court in a cause therein numbered Civil 3916, in which the United States of America is plaintiff and appellant, and Herbert A. Jones Jr., is defendant and appellee; that the said transcript has been prepared by me in accordance with the designation of contents of the record on appeal filed by the appellant, and in accordance with the rules of this court; that I have

prepared the foregoing transcript with the original record thereof and that it is a full, true and correct transcript of the record and proceedings had in said court in said cause, in accordance with the said designation as the same appears of record and on file at my office and in my custody.

I further certify that I have enclosed under separate cover a duplicate transcript of the testimony of proceedings in court dated December 22, 1947 and filed in this office in this cause, together with exhibits 1, 2-a, 2-b, 2-c, 2-d, 3-a, 3-b, 3-c, 3-d, 3-e, 3-f, 3-g, 3-h, 3-i, 4-a, 4-b, 4-c, 4-d, 4-e, 4-f, 4-g, 4-h, 4-i, 5, 9, 10, 11-a, 11-b, 11-c, 11-d, 11-e, 11-f, 11-g, 11-h, 11-i, 12-a, 12-b, 12-c, 12-d, 12-e, 12-f, 12-g, 13, 14, 15, 16, 17, 18, also 4 sets of gears marked exhibits 6-a, 6-b, 6-d and 6-e.

In testimony whereof I have hereunto set my hand and affixed the seal of said court in Portland, in said District, this 28th day of June, 1948.

(Seal)

LOWELL MUNDORFF,
Clerk.

By /s/ F. L. BUCK,
Chief Deputy. [40]

In the District Court of the United States
for the District of Oregon

Civ. No. 3916

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HERBERT A. JONES, JR.,

Defendant.

Portland, Oregon, Monday, December 22, 1947
1:30 o'clock p.m.

Before: Honorable Claude McColloch, Judge.

Appearances: Mr. Victor E. Harr and Mr. Gene B. Conklin, Assistant United States Attorneys, appearing on behalf of the United States of America, Plaintiff. Mr. Thomas Tongue, III, Attorney for Defendant.

TRANSCRIPT OF TESTIMONY AND PROCEEDINGS

Mr. Tongue: In this case, if your Honor please, I do not believe a pre-trial order has been actually signed as yet. I think Mr. Harr submitted a draft and I submitted certain pages to be inserted. Since then Mr. Harr has submitted to me another page to be inserted, and that is satisfactory to me, if I may hand it to the Court. [1*]

The Court: You have agreed, have you, as to the form of the order?

* Page numbering appearing at foot of page of original certified Reporter's Transcript.

Mr. Tongue: Yes. There are only two changes which I think can be made by interlineation, if I may call the Court's attention to them. I have discussed these with Mr. Harr. On page 14, line 8, it reads: "Defendant objects to Plaintiff's Pre-Trial Exhibits 4, 5 and 7——"

The Court: Take your time. You gentlemen arrange that with the Clerk after a while and then I will sign it. Let's get along.

Mr. Harr: Under the exhibits, the girl in writing it up did not segregate between the plaintiff's and defendant's exhibit.

The Court: You arrange that with the Clerk.

Mr. Harr: We can do that.

The Court: Call your witness.

R. M. GIVENS

was thereupon produced as a witness on behalf of plaintiff and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Harr:

Q. State your full name, please.

A. R. M. Givens.

Q. Whom are you employed by?

A. War Assets Administration.

Q. How long have you been with the War Assets Administration? [2]

A. Since April, 1946.

Q. In what capacity or capacities have you been employed by them?

(Testimony of R. M. Givens.)

A. Well, Chief of the Sales Assistance Division, Chief of the Organization and Methods Division, and Special Assistant to the Regional Director.

Q. It is in that capacity that you are presently engaged? A. Yes.

Q. On October 30, 1946, in what capacity were you engaged?

A. Chief of the Organization and Methods Division.

Q. In line with your work there, are you familiar in a pretty general way with the procedure as to these commodities as they are declared surplus and as they come into the organization, and the general procedure? A. Yes, I am.

Q. What is the first step, Mr. Givens, when property comes to you? How does it get to you?

A. The form known as WAA1, formerly SPB1, prepared by the owning agency, transmitted in three copies, is received in our receiving section and assigned a WAA number. A copy of the form is sent back to another agency so that they have our WAA number, and also for their help in delivering the material. Then it goes into our coding section.

Q. That is, the coding section of your division?

A. That is right. The rest of the steps take place by our [3] employees and in our office. From Coding it went to Inspection.

Q. What is the purpose of coding?

A. That is for our use in the IBM machines.

(Testimony of R. M. Givens.)

Q. They are given a code number?

A. Given code numbers. Let's see if I can remember them all—In other words, there are various numbers that are used in arranging these IBM cards for inventory.

Q. When this SPB1 comes from any agency, from any owning agency, is there anything which indicates to you the condition of the property?

A. I can't answer that, Mr. Harr. I believe it does, but I won't swear to it.

Q. Anything that indicates to you what the cost of the property was?

A. Yes, that is indicated on the SPB1. We cannot receive it without the cost on it.

Mr. Harr: At this stage, your Honor, I wish to hand the witness Government's Pre-Trial Exhibits 2-A to 2-D, inclusive.

The Court: Do you have a lot of exhibits?

Mr. Harr: We have.

The Court: Put them all in. You do not need to identify them in this matter if you have agreed on them.

Mr. Harr: There will be some objections to some of them, your Honor.

The Court: They are all going to be admitted subject to any [4] objections which may be stated on the record now or at a later time. Just consider them as all admitted.

Mr. Harr: May we have the Reporter mark them?

The Court: He can do that later. You have got your numbers now.

(Thereupon the following exhibits were received:)

EXHIBIT No. 1

Copy of Special Offering No. C-286.

EXHIBIT No. 2 (Ex. 2-A to 2-D, incl.)

Forms SPB1, Declaration of Surplus Property.

EXHIBIT No. 3 (Ex. 3-A to 3-I, incl.)

Forms WAA2a, Sales Memoranda.

EXHIBIT No. 4 (Ex. 4-A to 4-I, incl.)

Forms WAA4a.

EXHIBIT No. 5

Bulletin No. 80, dated September 23, 1946, entitled "Daily W.A.A. Bulletin."

EXHIBIT No. 6 (Ex. 6-A to 6-D, incl.)

Universal Gear Joints.

EXHIBIT No. 7

Form SPB1.1, Withdrawal Form.

EXHIBIT No. 8

Forms WAA2a, other items included in Special Offering No. C-286.

EXHIBIT No. 9

Form 1121, Mailing Card. [5]

EXHIBIT No. 10

Receipt.

EXHIBIT No. 11 (Ex. 11-A to 11-I, incl.)

Forms WAA1a, for all items sold to defendant.

EXHIBIT No. 12

Pleadings in Circuit Court, Multnomah County, Case No. 174225, Jones v. Mudge, et al.

(Testimony of R. M. Givens.)

EXHIBIT No. 13

Depositions of C. T. Mudge, D. M. Gibson and S. M. Buffett in Case No. 174225.

EXHIBIT No. 14

[Deposition of William J. Burgoyne, set out in full page 183 of this Transcript of Record.]

EXHIBIT No. 15

[Depositions of Delbert W. Webb and Louis A. Zanon, set out in full, page 211 of this Transcript of Record.]

EXHIBIT No. 16

Memorandum dated March 13, 1947, to S. M. Buffett.

EXHIBIT No. 17

Shipping Notice dated March 13, 1947.

EXHIBIT No. 18

Letter dated December 4, 1946, C. T. Mudge to Neal W. Bush.

EXHIBIT No. 19

Universal Joint—Sample of automotive joint.

EXHIBIT No. 20

Three roller bearings.

Mr. Harr: Will you hand these to the witness, please?

(Exhibits No. 2-A to No. 2-D, inclusive, shown to the witness.)

Q. Examine those exhibits, Mr. Givens. Are those documents part of your official files?

A. They are.

(Testimony of R. M. Givens.)

Q. Did they come to your department in the regular course of [6] business?

A. That is right.

Q. In examining those, does that state the cost price? A. Yes, sir.

Q. Will you refer, first, to the exhibit number and the form number, and state in the record the cost price of each of those items? A. Yes.

Q. And what they cover?

A. Exhibit 2-A, the declaration, covers 28 universal joints at an acquired value of \$385.00.

Exhibit 2-B covers 199 universal gear joints with an acquisition value of \$4,686.45.

Exhibit 2-C covers 1,655 universal gear joints, acquisition cost \$20,687.50.

Exhibit 2-D covers 2,442 universal gear joints with an acquisition cost of \$36,775.00.

Q. I will ask you whether or not the acquisition cost is the declared cost? A. That is right.

Q. After that has gone to the coding section, as you state, what is the next step?

A. It then goes to the Inspection Section. They send an inspector out to verify the amount, the condition, the general condition of the material, and anything pertaining to it. He [7] prepares his report, and then that goes to our WAA4 preparation section where our inventory record was made.

Q. I will hand you Exhibits No. 4-A to No. 4-I, inclusive. Are those the forms you speak of that are prepared at that juncture?

(Testimony of R. M. Givens.)

A. That is right.

Q. I will ask you whether or not the Forms WAA4a state the condition of the merchandise?

A. Yes, they do, sir. They show the condition under the code number.

Q. Are you familiar with the code number?

A. I am sorry, sir. The condition shown on this is the code that was used at that time. It has been changed since then, and I don't remember it.

Q. All right. What is the next step in the procedure?

A. After the Forms WAA4 were prepared, they were sent to the Pricing Section for prices and then to the commodity divisions for normal disposal procedure, to program for disposal by the various means prescribed to us.

Q. Who programs certain commodities to a certain section of War Assets Administration?

A. If you mean the distribution of these forms, they were distributed to the various commodity groups, in accordance with the code that appears on the form WAA4.

Q. Who puts that on the Form 4 that would designate the disposal branch or the disposal agency? [8]

A. That is done in the Coding Section.

Q. With reference to the WAA4s that you have in your possession, do they indicate that those items as listed there were assigned to the Automotive and Construction Machinery Division?

(Testimony of R. M. Givens.)

A. To the best of my knowledge, yes. Those codes are the ones that would have gone to Automotive.

Q. Being there in the Automotive and Construction Machinery Division, what is the next step that the Division would take?

A. The people in that division would assemble a group of those and arrange what we call a program for disposal. In this case I believe there were—They were prepared and put in the program which was subsequently advertised calling for bids for this material.

Q. In this instance, Special Offering No. C-286, I believe. Is that correct? A. That is right.

Q. Following that, after the Advertising Section prepares the sales brochures, they are distributed to potential purchasers, I believe?

A. That is right. We have a regular mailing list and the brochure is mailed out to that list.

Q. Normally speaking, is it not a fact that they would circularize the materials on a fixed-price basis first and then, if there were no takers, then they would sell the materials on a bid basis, is that correct? [9]

A. That is right. Under certain conditions it may be advertised on a sealed-bid basis.

Q. If there are no bidders at the fixed price or by sealed bids, then the next normal procedure would be to offer them on a negotiated basis, is that correct? A. Yes.

(Testimony of R. M. Givens.)

Q. You are familiar, are you not, with the bulletins put out called the "Daily W.A.A. Bulletin?"

A. Yes, sir.

Q. I will hand you Exhibit No. 5 and ask you to refer to that and state whether or not in that bulletin are designated the limits of authority of the various officers of the Sales Division.

Mr. Tongue: If your Honor please, do you want me to state my objections at this time?

The Court: I am going to hear whatever evidence either side has to offer.

Mr. Tongue: I understand, then, at some time we will have an opportunity to state our objections into the record?

The Court: Oh, yes, of course.

Mr. Harr: Q. Referring to that document, Exhibit No. 5, will you state the portion of it applicable to the delegation of authority to the various officers?

A. Section 2 of WAA Daily Bulletin No. 80 indicates the limitations within which the Regional Director may delegate authority for various personnel to approve sales contracts. [10]

Q. Does it state the maximum amount of sales that can be made, as to the declared value?

A. Yes, it does.

Q. What are the maximums?

A. The Regional Deputy Director may approve sales up to \$500,000.

Q. Up to \$500,000 of the declared cost?

(Testimony of R. M. Givens.)

A. Acquisition cost. Chief of the Sales Division, up to \$100,000.

Q. Who is the Chief of the Sales Division? Is that involved in this case?

A. Well, at that time, Mr. Zanon was Chief of the Metal Sales Division. I believe Mr. Burgoyne was Chief of the Automotive and Construction Machinery Division. I may be wrong on that one. I am not sure.

Q. Just continue on, and then I will ask you another question.

A. The chiefs of the commodity branches could approve up to \$50,000.

Q. Is that what Mr. Burgoyne would be at that time?

A. May I interject here? These were the maximums that the Regional Director could authorize. Whether he actually authorized them in those amounts or not was up to him. I believe a letter was written to Mr. Burgoyne on October, I believe, 21st, 1947, which gave him authorization in the amount of \$50,000.

Q. Is that what is provided in that regulation?

A. That is right. In this regulation it goes on to provide that salesmen may approve up to \$5,000.

Q. \$5,000 of declared value?

A. That is right.

Q. Can you tell us what Mr. Zanon's authority was?

(Testimony of R. M. Givens.)

A. Mr. Zanon had authority up to \$100,000, dated October 2, 1946.

Q. And Mr. Burgoyne?

A. \$50,000, authorization dated October 21.

Q. 1946? A. That is right.

Q. And Mr. Peterson?

A. Mr. Peterson had no authorization.

Q. Mr. Williams?

A. F. C. Williams had authority to approve up to \$100,000, dated October 2nd.

Q. Mr. Webb?

A. Mr. Webb had no authorization.

Q. With reference to the procedure of the issuance of WAA2—What is the purpose of the WAA2?

A. WAA2 is the document on which sales are made. It is made in three parts. The original goes to the customer; the second copy, I believe, the green one, goes to the cashier and—No, excuse me. There are white, green and pink copies. Let me identify them that way. The white is the original, and is ultimately attached to this copy of WAA1, which is the formal sales document; the green copy goes to the cashier; and the [12] pink copy, to the customer.

Q. Is there any copy of that that goes to the owning agency? A. No, there is not.

Q. Following the issuance of the WAA2, there is a WAA1 made up?

(Testimony of R. M. Givens.)

A. That is right. The white copy of that goes to the billing unit for preparation of the WAA1.

Q. A copy of the original of this WAA1 goes to the customer?

A. The original goes to the customer.

Q. And a copy to the disposal agency—I mean, the owning agency?

A. A copy of the WAA1 goes to the owning agency, that is right.

Q. That is their notification of the sale of that particular commodity? A. That is right.

Q. And, based on that, then, delivery is, in the normal course of events, made?

A. That is right.

Mr. Harr: You may inquire.

Cross-Examination

By Mr. Tongue:

Q. Referring to Exhibit No. 2, the Declaration of Surplus, can you tell me who filled in the red pencil figures on those forms?

A. That was done in the Coding Section, Mr. Tongue, but I can't tell you which one of the coders did that. [13]

Q. That was done, then, after the forms reached the War Assets Administration?

A. That is right.

Q. What does the figure 31.81 stand for on those forms, if you know?

A. I believe you are referring to the Standard Commodity Classification Code.

(Testimony of R. M. Givens.)

Q. That may be.

A. At this time we were using up to eight digits, I believe, in the SPB1.

Q. Do you know what that stands for?

A. I would have to have a copy of the code book here to tell you.

Mr. Tongue: May I approach the witness?

The Court: Yes.

Mr. Tongue: Q. Referring to Exhibit No. 4, the Form WAA4, can you tell me who wrote in the figure \$2.50 in ink on those forms that relate to the universal gear joint?

A. I can't tell you. That was presumably done in Pricing. That is where it should have been done.

Q. After the document was typed, presumably?

A. Yes. After this document was typed, it then went to Pricing.

Q. You don't know when that was done, then?

A. You mean what date?

Q. When the figure was written in? [14]

A. It would be done in Pricing. I presume we would have the register out there. They could look up the date, if that is what you want.

Q. Now, referring to the form that relates to the miter gears, you see there that the figure \$1 is typed in there. Would that presumably be done when that form was typed originally?

A. The only explanation would be this: It was in August, I believe, Washington directed the installation of a WAA4 system. Some of this ma-

(Testimony of R. M. Givens.)

terial had been in inventory previous to that for anywhere from six months to a year, so as to anything that was typed up in the WAA4 section that had prices on it, the prices are typed in here when they typed the rest of the form.

Q. Referring to Exhibit No. 4, relating to the Jeep automobile, do you notice that the figure \$450 has been crossed out? Do you know who did that or when that was done?

A. My answer would be pure guesswork. Do you want it?

Q. I want to know if you know when it was crossed out?

A. I don't know when that was crossed out, no.

Mr. Tongue: No further questions.

Redirect Examination

By Mr. Harr:

Q. Do you know who could have put those figures on there?

Mr. Tongue: Not who could have, but I want an answer to my question. Do you know?

A. No, sir. [15]

Mr. Harr: Q. Well, do you know whether or not the Pricing Section sometimes puts that in there?

Mr. Tongue: I do not want "sometimes." I would like to have the answer limited to what he knows of his own knowledge, Mr. Harr, if I can, please.

(Testimony of R. M. Givens.)

Mr. Harr: That is what I am asking him, if he knows of his own knowledge.

A. The Pricing Section would write the figures in longhand and the WAA4 section would have typed them in by machine.

Mr. Harr: I think that is all.

Recross-Examination

By Mr. Tongue:

Q. Do you know if that was done in this case, in that way? A. Which?

Q. By the way you have just testified, in response to the question by Mr. Harr.

A. Mr. Tongue, I can't answer that question. We have, I don't know how many, thousands of documents out there. I don't know what happens to each one of them.

Mr. Tongue: That is all.

(Witness excused.) [16]

DELBERT F. WEBB

was thereupon produced as a witness on behalf of plaintiff and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Harr:

Q. Your name? A. Delbert F. Webb.

Q. You are employed by the War Assets Administration? A. Yes.

Q. What is your present occupation?

(Testimony of Delbert F. Webb.)

A. Assistant Sales Manager.

Q. Were you connected, October 30, 1946, with War Assets Administration? A. Yes.

Q. In what capacity?

A. As clerk-typist.

Q. On about the 30th of October, did you meet the defendant, Mr. Jones?

A. I don't know if that is the exact date, but around October I did.

Q. State the circumstances under which you met Mr. Jones, under which Mr. Jones came to you?

A. At that time we had a receptionist at the desk and it was her practice to call us when a customer came to call on us, asking if we were available, and would answer questions. [17]

At this time she called Mr. Burgoyne and he was on the telephone and Mr. Peterson was busy, so she asked me if I would take care of it and I said I would, I would try to give him the information he needed or desired.

Mr. Jones came in and sat down and was inquiring about Jeep engines, and at that time the only engines we had that were available for sale were then among the residue of this sale, C-286.

Q. I will hand you Exhibit No. 1, which is Special Offering C-286, and I will ask you whether or not you referred to that particular offering at the time Mr. Jones and you had your discussion?

A. Yes, I referred to this.

Q. I will ask you whether or not at that time

(Testimony of Delbert F. Webb.)

some of these items listed in Special Offering C-286 had been disposed of?

A. Some of them, yes.

Q. And there was a residue—— A. Yes.

Q. ——as to certain items? A. Yes.

Q. Among which were two Jeep motors?

A. Yes.

Q. And the universal gears here involved?

A. Yes.

Q. Together with some other miscellaneous items? [18] A. That is right.

Q. At the time he came to you, what was his inquiry about? A. About the Jeep engines.

Q. What did you tell him?

A. I told him we had two Jeep engines, the residue from a sale that we had just closed, and that he might be able to obtain those, and that I was not a salesman but was merely trying to pass out information to those desiring information about obtaining surplus property.

Q. What did you tell him about the residue?

A. I told him in order to get the Jeep engines he might have to purchase all the residue that was listed.

Q. Did you tell him what that residue was?

A. I do not believe I came right out and told him. I ran my finger down the residue.

Q. You had the list at that time in front of you? A. That is right.

(Testimony of Delbert F. Webb.)

Q. A similar list to what you have in your hand? A. That is right.

Q. You ran your finger down this list?

A. That is right.

Q. In calling his attention to what was left, is that right? A. Yes.

Q. What was the discussion?

A. The main thing was Jeep engines, that he would like to buy [19] them but, since I said he might have to purchase all the residue, he did not think he would desire to buy all the other junk that went with it.

Q. I will ask you: What was his statement at that time? Can you put it in exact language, as well as you remember it?

A. Not the exact language, no.

Q. Well, what did he say?

A. That is about what he said.

Q. That he did not want to buy a bunch of junk, is that it?

A. In order to obtain the Jeep engines.

Q. Was there any conversation at that time with him that indicated that he knew what these gears were? A. No, sir.

Q. He didn't say he knew anything about the value of any of these or what these gears were used for? A. No.

Q. Did you know? A. No.

Q. What did it mean to you when you saw "universal gears?"

(Testimony of Delbert F. Webb.)

A. Meant to me, since they were in the Automotive Division, that they were automotive gears universal gears.

Q. He told you he did not want to buy a bunch of junk? A. That is right.

Q. What further conversation did you have about prices, and so forth? [20]

A. About what?

Q. About the price, and any other conversation as you can recall it?

A. The chess wagons came into the conversation, as to what they were. I told him I didn't know—I told him about what I thought they were and where they were located, and about the, I think it was, miter gears, where they were located

Q. Did he ever tell you that he worked previously for the Commercial Iron Works?

A. At that time?

Q. Yes. A. No.

Q. Did he tell you he was thoroughly familiar with these items, having worked at the shipyards?

A. No, sir.

Q. Did he tell you what they were or what they were to be used for? A. No, sir.

Q. The only conversation that you had was that they were junk?

A. That I can remember, yes, sir.

Q. All right. Did he ask you how much money you wanted for them, I mean for the residue, in-

(Testimony of Delbert F. Webb.)

cluding these two Jeep motors, or how did that come up as to price?

A. I couldn't swear on that. I can't remember. I couldn't answer as to that. [21]

Q. Did he tell you that they would be sold for \$75.00? A. No.

Q. How did that come about?

A. I referred Mr. Jones to Mr. Burgoyne. I mean Mr. Burgoyne was the authorized salesman, that I was a typist, and that he would have to obtain them from him if he was going to obtain them, and that is about the extent of the conversation.

Q. You don't know where the figure \$75.00 came into the discussion?

A. It came in, yes, but I can't put my finger on it. I think he either asked me what they would be and I told him approximately —I think I went to Mr. Burgoyne, I believe, and asked him what he would accept for them. Mr. Jones, I believe, asked him if he would accept \$75.00, and then I went to Mr. Burgoyne and asked if the acceptance of that sum would be made, and then I left it to Mr. Burgoyne.

Q. Did Mr. Burgoyne indicate to you that would be acceptable? A. Yes.

Q. You had no authority to sell, is that right?

A. That is right.

Q. And Mr. Burgoyne completed the sale, is that it? A. Yes, sir.

(Testimony of Delbert F. Webb.)

Q. Did you later have a conversation with Mr. Jones? Did you talk to Mr. Jones later?

A. No. I was instructed to phone to him, but his mother [22] answered the phone. I think it was on a Friday. His mother answered and said he was taking delivery of some materials that he had purchased.

Q. Did you later transmit any information to Mr. Jones or to his mother of the fact that delivery would be refused on the gears?

A. No, only that there was legality involved.

Q. Legality involved? Illegality involved?

A. Illegality, yes.

Q. You did not notify Mr. Jones personally of that? A. No.

Q. Do you know who did?

A. I imagine—No, I don't.

Mr. Harr: You may inquire.

Cross-Examination

By Mr. Tongue:

Q. You testified that there was a residue left after this Special Offering C-286, which is designated as Exhibit No. 1, was issued, is that right?

A. That residue was left after that offering was closed?

Q. Yes. A. Yes.

Q. Were any bids received after that offering on these goods?

A. Not that I can remember, no. [23]

Q. How long was that residue on hand after the

(Testimony of Delbert F. Webb.)

offering was closed, before Mr. Jones came down to talk with you?

A. Approximately three days or four days.

Q. Do you know of your own knowledge that that residue had not been on hand longer than that, prior to October 30, 1946?

Mr. Harr: Your Honor, the exhibit speaks for itself. I believe upon reference it will show the last bid was October 22nd, and bids were received I believe on October 22nd, and there would be that interim between that date and the date of sale.

Mr. Tongue: Thank you, Counsel.

Q. Do you know whether anyone came to inquire concerning that residue during that interim?

A. Came to me?

Q. Came to you or to someone else out there, to your knowledge? A. No.

Q. What do you mean by "No," that you don't know, or that no one came there?

A. I don't know of anyone that came, myself.

Q. Did you try to interest anyone in that residue? A. No.

Q. Did any other salesman try to do that, to your knowledge? A. Not that I know of.

Q. Was it the customary practice for salesmen at the War Assets Administration, when people came in to inquire about certain [24] goods, to try to interest them in other goods that might be available there?

(Testimony of Delbert F. Webb.)

A. Since I was not a salesman at that time, I would not be able to answer that.

Mr. Harr: I object to that, your Honor, as to whether it was the custom or not.

Mr. Tongue: Q. Did scrap dealers often call in to see if there were any items on hand that they might be interested in?

A. At that time I would not have known that, either.

Q. Did Mr. Williams decide that this residue should be offered for sale at the best price that could be procured?

A. Yes, I overheard him say so.

Q. Who is Mr. Williams?

A. Mr. Williams, I believe, at that time was chief of the awards branch or division.

Q. Do you know whether that residue was originally offered for somewhere between \$900 and \$1,000?

A. No, I don't.

Q. Do you know whether it was later reduced to around \$250?

A. After close of the sale?

Q. No, after no bids had been received and it was decided to put it up for negotiated sale?

A. At approximately \$200.

Q. Then you say it was later reduced to \$75.00?

A. That is right. [25]

Q. You say you showed Mr. Jones this Special Offering with a description of the goods?

A. That is right.

Q. When he came to you?

A. Yes.

(Testimony of Delbert F. Webb.)

Q. Was there any discussion, specific discussion, of the universal joints at that time?

A. No, sir.

Q. That you remember? A. No, sir.

Q. Did you know that Mr. Jones worked at the Commercial Iron Works, the shipyard, at that time?

A. I didn't know whether he had worked at the Commercial, no.

Q. Did you know at that time that he had worked at any shipyard? A. I believe so, yes.

Q. In referring to "the other junk," was there any discussion as to what he meant when he referred to it as junk?

A. As far as my interpretation of it was, he was referring mainly to these chess wagons.

Q. Did you have any reason to doubt his good faith at that time? A. No, sir.

Q. You say you took Mr. Jones to see Mr. Burgoyne, is that right? A. That is right.

Q. And that final sale was consummated by Mr. Burgoyne? [26] A. Correct.

Q. Did you have anything further to do with the transaction?

A. Only to instruct the typist to type up the document.

Q. Are you referring to the forms?

A. WAA2.

Q. WAA2? A. Yes.

Q. Introduced here as Exhibit No. 3?

(Testimony of Delbert F. Webb.)

A. Yes.

Q. In typing these forms, WAA2, in filling out the space entitled "Types," after the space indicating the program, which in this case was filled out as C-286, I assume that "C-286" referred to the Special Offering numbered C-286?

A. That is right.

Q. What did you do when you filled in the next space indicating the type?

A. Since I did not type it up——

Q. What instructions did you give to your typist?

A. I gave her a copy of the WAA4 and asked her to type up a sales WAA2 document.

Q. Would that refer back to the type of program of the original special offering?

A. If it is put in the WAA2, it actually refers back to the type of program, yes.

Q. What does the designation "0-4" mean with reference to the [27] type of sale?

A. At Mr. Givens' suggestion; the coding was different at that time, and I can't remember what the code is at this time.

Q. When you instructed that the word "bid" be stricken, you were referring back to the original type of the special offering or program, is that right?

A. I didn't make any instructions.

Q. Was that the custom and practice?

A. Yes, if there was a bid, to put in the type or method or——

(Testimony of Delbert F. Webb.)

Q. Would that be true even though particular goods were sold as a part of the residue remaining, after no bids had been received?

A. At that time I didn't know what would be put into that sales document other than the original program.

Q. You say later that you called Mr. Jones. Did you talk to Mr. Jones personally at that time?

A. At the time I phoned him?

Q. Yes. A. No.

Q. Whom did you talk to?

A. His mother.

Q. As I understand it, you told her the gear joints should be returned, is that right?

A. No, sir. I said that there was illegality involved in his sale.

Q. Of the gear joints? [28]

A. No. I didn't mention gear joints. I said we would like to have him come in the following Monday, if it was possible.

Q. Did he come in the following Monday?

A. I don't remember whether it was Monday or Tuesday or Wednesday, but he came in and saw Mr. Burgoyne.

Q. Did you ever hear of a sale canceled for error made in the preparation of the WAA4 document?

A. I will have to think about it. I can't answer that question. I can't remember of any sale being canceled because of faulty documentation.

(Testimony of Delbert F. Webb.)

Q. Do you know of any sale that was canceled because of any error by the War Assets Administration after the sales document had been made out and delivered to the purchaser?

Mr. Harr: Objected to, your Honor, as immaterial as to whether or not any other sale was canceled.

The Court: Sustained.

Mr. Tongue: Your Honor, I submit I think we should have some latitude to show what the custom and practice was at the time that this sale was consummated. As far as we know, this is the only customer as to whom the War Assets Administration ever tried to cancel or rescind any sale for any error of this type or any other type. We will show in all other instances the sales were approved and went through. Do I understand your Honor to mean that we will not be allowed to produce evidence as to practice, as to any other sales? [29]

The Court: That is right.

Mr. Tongue: And whether any other sales were made at similar proportions of the selling prices to the original cost to the Government.

The Court: I don't understand that. You will have to explain that later, when we get to it.

Mr. Tongue: What I mean is simply this, your Honor——

The Court: I say, you can explain that later when we get to it.

Mr. Tongue: Very well.

(Testimony of Delbert F. Webb.)

The Court: That is not allowable to show as against the Government. That has been ruled on many times. It is not allowable to show that the Government made some mistake at some other time.

Mr. Tongue: Very well. May I put it on this basis, your Honor?

Q. Mr. Webb, what was the custom and practice of the War Assets Administration in disposing of residue of surplus commodities that remained after they had been offered for bids and after no bids had been received?

A. At that time Mr. Peterson was my cohort and helper. He usually put them on a new bid.

Q. Put them on a new bid?

A. To re-bid the items that did not sell.

Q. Were there any respect in which this sale did not conform [30] with the custom and practice established at that time by the War Assets Administration? Do you know?

Mr. Harr: Objected to, your Honor. I think it is going far afield. I think the Government is not bound by custom and practice.

The Court: He may answer.

A. Please state it again.

The Court: Go ahead and answer the best you can. What was the custom and practice?

(Question read.)

A. None, to my knowledge, no.

Mr. Tongue: That is all.

Redirect Examination

By Mr. Harr:

Q. I hand you Exhibits 3-A to 3-I, inclusive,

(Testimony of Delbert F. Webb.)

and ask you to refer to the portion marked "disposal Type Method." I notice there is typewritten the word "Ordinary" as it pertains to this particular sale. Is that correct? A. Yes.

Q. I beg your pardon? A. That is right.

Q. Ordinarily, is it not true you would type in there the type of transaction it was, whether it was a fixed price, a bid or what?

Mr. Tongue: Just a moment. I object. [31]

Mr. Harr: Let me complete it.

Q. Or a negotiated sale?

Mr. Tongue: Objected to as a leading question, your Honor.

The Court: Answer.

A. Yes, if it was fixed, it would be "fixed"; if it was a bid, it would be "bid"; if it was negotiated, it would be "negotiated" under the type.

Q. I will ask you whether or not this was a negotiated sale? A. Theoretically, yes.

Q. What do you mean, "theoretically?"

A. Well, with the knowledge that I had at that time, since I was merely an—was merely employed by the War Assets Administration, under my impression it was a negotiated sale; as to the documents, it shows as a bid.

Q. Who made these documents?

A. The clerk-typist, the girl stenographer.

Q. Under your direction?

A. Under my direction.

(Testimony of Delbert F. Webb.)

Q. But you were new at the business at that time? A. Yes.

Mr. Harr: I think that is all.

Recross-Examination

By Mr. Tongue:

Q. Didn't you testify on my cross-examination that when the type of program was filled in that referred back to the original [32] Special Offering and type of that program?

A. Yes.

Mr. Tongue: That is all.

(Witness excused.) [33]

WILLIAM J. BURGOYNE

was thereupon produced as a witness on behalf of the plaintiff and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Harr:

Q. Your name is William J. Burgoyne?

A. Yes.

Q. Employed by the War Assets Administration? A. Yes.

Q. In October, 1946, in what capacity were you engaged?

A. I was Acting Chief of the Automotive and Construction Machinery Division.

Q. The Construction Machinery Division?

A. Yes.

Q. Did you have referred to you, among other

(Testimony of William J. Burgoyne.)

things, certain universal gear joints? A. Yes.

Q. For disposal? A. Yes.

Q. As the head of that division, will you state the practice—not the practice that what was done with reference to advertising those commodities for sale.

The Court: Didn't you cover this once? Isn't this cumulative? Did you cover this once?

Mr. Harr: Possibly a little bit, except that I think this [34] gentleman will go into the matter of it being under his direction. It is somewhat cumulative.

The Court: Don't have him cover what Mr. Givens testified to.

Mr. Harr: Q. This C-286, that was put out as a special offering? A. Yes.

Q. That was published on a bid basis?

A. On a bid basis, yes.

Q. Did you receive any bids?

A. I don't recall.

Q. At least, it was not sold on bids, is that correct? A. Not that I recall.

Q. That is, this particular residue we are talking about now?

A. No. This was not sold on a bid.

Q. Those items were not sold on bids?

A. No. This residue is sold on a negotiated basis.

Q. In other words, you got no bids, and then you negotiated with people that came in, is that correct?

(Testimony of William J. Burgoyne.)

A. After the article is advertised. In cases where it is advertised on a fixed price and no bids received, then we offer it again on a sealed bid and then, if no sealed bids are received, we offer it on a negotiated sale.

Q. Do you know whether or not this was advertised previously on a fixed-bid basis? [35]

A. This was only advertised on a sealed bid basis.

Q. Your authorization extended to \$50,000?

A. Yes, sir.

Q. Are you in a position to say that the total declared value of those articles exceeded \$50,000?

A. No, I am not.

Q. That is the cost price, the cost price of all these articles sold? A. The declared value?

Q. In this residue?

A. I knew at the time that it did not exceed \$50,000.

Q. That it did exceed \$50,000?

A. Did not exceed \$50,000.

Q. You say you knew that at the time of this sale? A. Yes, that is right.

Q. Where did you get that information?

A. The acquisition code, taken off the WAA4s.

Q. Do you refer to the WAA4s to determine the declared value? Did you, I mean?

A. Not personally, no, I did not.

Q. As a matter of fact, the gears alone exceeded \$62,000, did they not?

(Testimony of William J. Burgoyne.)

A. I don't know whether they exceeded \$62,000 or not.

Q. You did not know it at that time, either?

A. No, not at that time. [36]

Q. Did Mr. Jones come to you in order to close up this transaction?

A. He did. However—Mr. Jones talked to Mr. Webb regarding this property and, as I recall, Mr. Webb came to me for permission to sell and I told him to go ahead and write up the order. I was busy. I had the whole commodity group to take care of and I was interviewing several people every hour and I didn't go into it very carefully at the time. However, I knew about what was going on, in all of these deals.

Q. It was apparently under your instructions that the deal was closed on a basis of \$75.00 for this residue, made with your knowledge?

A. Yes.

Q. And consent? A. Yes.

A. Is that correct? A. Yes.

Q. Referring back to those forms, did you sign your name?

A. Mr. Peterson signed my name and put his initials below.

Q. Mr. Peterson was in your department at that time? A. Yes.

Q. As I understand it from the testimony of Mr. Givens, he had no authority to make the sale?

A. He had no authority to okeh, yes, that is

(Testimony of William J. Burgoyne.)

right, okeh any sale, but he had authority to sign my name. [37]

Q. Were these gears automotive equipment?

A. At that time I presumed they were.

Q. How did you come to that conclusion?

A. Because they were sent into my department for programming, and I had the Automotive and Construction Machinery Division. Any commodity coded to me was sent into my department, automotive and construction machinery.

Q. Do you know that you did, then, at any time, carefully consider these items and the description of them?

A. No. I looked at the WAA4s but did not do it very thoroughly.

Q. You saw "universal gear joints"?

A. Yes.

Q. And, through that, you assumed that it was automotive equipment?

A. I assumed that it might be, yes.

Q. Was it automotive equipment?

A. Since then I have found out that it was not.

Mr. Tongue: The Government has maintained that its agents were not negligent in this transaction and, therefore, we submit that this line of questioning is not proper. It is contrary to their contention in the case.

Mr. Harr: I do not believe that is our contention, your Honor.

The Court: Well, go ahead.

Mr. Harr: Q. Did you later have some discus-

(Testimony of William J. Burgoyne.)

sion with [38] Mr. Jones? A. Not later.

Q. Did Mr. Jones tell you that he had previously worked at the shipyards and knew the value of these items? A. No, sir.

Q. Did he tell you they were worth around \$39,000?

A. No, sir; not that I recall, no, sir.

Mr. Harr: I think that is all.

Cross Examination

By Mr. Tongue:

Q. Mr. Burgoyne, have you had any experience in the automotive industry? A. Yes, sir.

Q. How many years?

A. I was ten years with the Ford Motor Company, Portland Branch.

Q. You are familiar by now—

The Court: What do you claim these things were worth, Mr. Harr? I am asking him.

Mr. Harr: They are worth, scrap value, \$2,260, and a cost of \$62,000.

The Court: I did not ask what they cost. I asked you what you claimed they were worth. What do you claim they are worth?

Mr. Harr: That would be a matter we don't know, your Honor.

The Court: A lot of things we don't know. We don't know whether we are going to heaven or hell, but we have to form an [39] opinion about it. What do you think they were worth? What do your people think? How badly were you cheated, as you claim you were cheated?

(Testimony of William J. Burgoyne.)

Mr. Harr: We will take the defendant's figures on that, your Honor. He says they are worth \$39,000 and some odd cents—thirty-nine thousand and some odd hundreds of dollars, I mean.

The Court: That does not sound very sensible to me, but go on. You do not expect to put on testimony as to what they were worth?

Mr. Harr: Well, we will put on testimony as to the very minimum they would sell for.

The Court: How much?

Mr. Harr: \$2,260.

The Court: That is what I wanted to know.

Mr. Tongue: Q. Mr. Burgoyne, you say you thought that this was automotive equipment, is that right? A. I presumed so.

Q. Did you ever see an automotive gear joint that operates on a gear and has a shaft?

A. Well, not exactly a gear, no.

Q. Do these gears—these gear joints operate on a gear and have a shaft?

A. From the description, yes.

Q. Was the description complete and accurate?

A. I didn't pay enough attention to the description when [40] programmed them.

Q. Is it not true that automotive gear joints ordinarily have a pivoting socket rather than a shaft?

A. Some of them have a socket at one end and are solid at the other end.

Q. Referring to the Special Offering, C-286, Ex-

(Testimony of William J. Burgoyne.)

hibit No. 1, where does it show these gears to have been located?

A. At one of the Maritime Commission ship-yards.

Q. Is it a fact or isn't it, that the Special Offering also includes various other items that could not be properly classified as automotive equipment?

A. There are some items on there that could be classified as construction equipment, yes.

Q. There were other items located at the ship-yards, were there not?

A. As I recall, yes.

Q. Was that Special Offering mailed out to various interested persons?

A. It was mailed out to the automotive and hardware, machinery and construction machinery—

Q. To what classes of interested persons was that Special Offering mailed?

A. To automotive, construction machinery, and heavy hardware, which list also contained scrap dealers.

Q. Sent to the principal scrap dealers in the Portland area? [41]

A. I suppose so.

Q. Do you know whether it was sent to the automotive parts dealers?

A. It was sent to the automotive part dealers on the automotive list.

Q. But it was also sent to these various other individuals?

A. Construction machinery and heavy hardware.

Q. Were any bids received as a result of this offering?

A. I can't recall.

(Testimony of William J. Burgoyne.)

Q. Even if you knew that these gear joints were not automotive equipment, would that have changed your program in any respect?

A. It might have.

Q. I will call your attention to the time when your deposition was taken, October 21, 1947, in the United States Attorney's office, when, in response to the question: "Even if you supposed or knew that these were not automotive equipment, would that have changed your program? Would that have changed your program in trying to sell these goods?" you answered: "No, it would not have changed my program." Do you recall that now?

A. Yes, I recall that. It would not change the program, inasmuch as these are sent to other than automotive, to construction machinery and scrap dealers and heavy hardware.

Q. So, the fact that you thought it was automotive equipment did not make any difference, did it?

A. Not entirely, no. [42]

Q. I will ask you whether there was anything else you could have done if you had known that it was not automotive equipment?

A. Possibly we might have found some other way to advertise it or advertise it in another offering but, at the same time, it might have gone to these same people on the same list.

Q. I call your attention to the same deposition in which you were asked this question: "Was there anything else that might have been done to receive bids on these goods?" And your answer: "Well,

(Testimony of William J. Burgoyne.)

there is nothing that we could have done to offer them in any other way so that we would receive them, except just taking a chance by reprogramming them like we did. We reprogrammed them and tried to get bids again." You recall that?

A. Yes, I recall that.

Was the method by which these goods were sold to Jones in any respect contrary to the custom or practice of the War Assets Administration at that time in disposing of residue remaining after no bids had been received?

A. Not necessarily, no.

Q. Mr. Burgoyne, is it a fact, or is it not, that a price between \$900 and \$1,000 was first placed on that residue? A. I don't know.

Q. Is it a fact that it was later reduced to a figure of approximately \$250?

A. I couldn't say. I never came in contact with that deal.

Q. Who authorized that deal? [43]

A. I don't know whether the deal was authorized or not.

Q. But at least you did authorize the sale to Mr. Jones at \$75.00, is that right?

A. Yes, sir.

Q. When did you first meet Mr. Jones in connection with this transaction?

A. The day that he talked to Mr. Webb, as I recall.

Q. Did Mr. Webb, when he brought Mr. Jones

(Testimony of William J. Burgoyne.)

to you, as he has testified, also bring along a list of the various items?

A. I don't recall whether he did or not.

Q. Was that list the same as the Special Offering with equivalent description?

A. I don't know whether he brought a list or not.

Q. Do you remember any of the conversation between yourself and Jones?

A. No, sir, I do not. I talk to so many people I don't recall the conversation.

Q. Do you remember anything that he said?

A. No, sir.

Q. Do you remember anything you said to him?

A. I can't recall, no.

Q. Do you remember whether there were any conversations regarding these gear joints?

A. I don't recall.

Q. After you told Mr. Jones you would sell him this residue for [44] \$75.00, what did you do then?

A. Mr. Webb came over and asked me if the sale would be okeh, if we sold it for \$75.00, and I told him to go ahead and write up the sale.

Q. Did he then write up the sale or have it done?

A. I suppose he had it written up, yes.

Q. Did he then bring the papers to you?

A. Not to me, no sir.

Q. At that time did you go to Mr. Zanon and confer with him? A. No, I didn't.

Q. Were the documents entitled Forms WAA2 ever submitted to Mr. Zanon by you?

(Testimony of William J. Burgoyne.)

A. Not that I recall. They go through channels—. When the WAA2 is made out, it goes through certain channels. Mr. Peterson signed my name "Okeh." and initialed it and then, in the course of procedure, it goes to Mr. Zanon to okeh it.

Q. You do not recall going to Mr. Zanon at the time Mr. Jones came? A. I do not.

Q. Would you be sure that you did not do that?

A. I could not—I can't recall going to Mr. Zanon with this WAA2.

Q. But you don't know whether you did or not?

A. That is right. I can't recall.

Q. Now, Mr. Burgoyne, referring to these Forms WAA2 where it [45] indicates the type of the sale, I will ask you if, according to the custom and practice of the War Assets Administration, that space would be filled in to refer back to the type of the original program?

A. In this case it might be a typographical error. It shows the original program C-286 and the type of sale as "bid."

Q. Does that refer back to the original type of program?

A. It might have been the procedure. I am not sure.

Q. Doesn't it frequently happen where goods have only a special or limited use, if no bids are received, they are sold on a negotiated basis for whatever offering may be made, even though it is a small fraction of the original cost price?

(Testimony of William J. Burgoyne.)

A. In most cases the residue is reprogrammed and offered on a bid basis.

Q. Do you deny what I have said has happened?

A. In some cases, material is offered on a negotiated sale, material that was not necessarily in big demand.

Mr. Tongue: That is all.

Redirect Examination

By Mr. Harr:

Q. Do you know about the manner in which it came to your attention that delivery was declined with reference to the gears?

A. Mr. Strong called me up and said Mr. Hull of Oakland, the Maritime Commission at Oakland, had called him and told him he had withdrawn the material from sale. [46]

Q. From the Maritime Commission?

A. Yes. Mr. Strong was with us at the time.

Q. The first notice was when Mr. Jones went to get delivery at the Maritime Commission and delivery was refused, is that correct?

A. Yes, sir.

Q. I will ask you whether or not you had any authorization to ever sell anything below scrap value?

A. No.

Q. Had you read the description of the merchandise listed, particularly about the gears, would that description have put you on notice as to value?

A. If I had gone into it thoroughly, yes.

Q. By the way, Mr. Burgoyne, you were unable

(Testimony of William J. Burgoyne.)

to recall a conversation. You were pretty busy along about October, 1946?

A. Very busy, yes.

Q. Do you remember how many people you saw in the course of a day?

A. Between telephones—

Mr. Tongue: That is immaterial, I suggest.

A. Between telephones and people coming in, I should judge about between ten and twelve an hour.

Q. You mentioned you had previously had automotive experience with the Ford Motor Company, ten years. How long before October 30, 1946, was the period of your employment with Ford? [47]

A. Left the Ford Motor Company in June, 1933.

Q. Between 1933 and 1946 what were you doing?

A. I was in business for myself.

Q. The restaurant business, I believe?

A. Yes, that is right.

Q. Had there been any change in automotive gears and so forth during that period of time?

A. I suppose there may have been, yes.

Mr. Harr: I think that is all.

Recross Examination

By Mr. Tongue:

Q. How did you learn the Maritime Commission had withdrawn these? A. How did I learn?

Q. Yes.

A. Mr. Bob Strong called me on the phone and said Mr. Hull had called him from Oakland, as I understand.

Q. Were any goods withdrawn other than the

(Testimony of William J. Burgoyne.)

gear joints themselves? A. Couldn't say.

Q. Do you know whether other items were withdrawn? A. I don't know.

Q. There has been testimony of the scrap value of these gears. I will ask you if it is not a fact that these gears were made of steel and bronze, that is, certain parts were steel and certain parts were bronze? [48]

A. I have no knowledge that they are.

Q. Is it not a fact that, in order to realize the maximum scrap value on these gears, each gear would have to have been taken apart to separate the steel from the bronze?

A. If they had been sold for scrap to scrap dealers, would have had to have been separated.

Q. Would not automotive universal joints also have had a substantial scrap value if they could be used for the purposes for which they were manufactured? A. Yes, but not as scrap value.

Q. Thinking that these were automotive gears, did you think \$75.00 represented their scrap value?

A. When the deal was made I did not realize the value of the commodity.

Q. Even if they had been automotive gears, would they not have had a scrap value far in excess of \$75.00? A. They would have had, yes.

Q. As a matter of fact, there were many sales made at that time at less than scrap value, were there not? A. I couldn't say.

Mr. Tongue: That is all.

(Testimony of William J. Burgoyne.)

Redirect Examination

By Mr. Harr:

Q. A certain number of these gears were practically all bronze? A. A certain percentage.

Q. Could those have been sent direct to bronze metal works in the condition they were in without any preparation?

A. I don't know the procedure, but I would say that they would have had to separate the steel and bronze. That is my opinion of it.

Q. Do you know what the scrap value of these gears was? Are you called upon in your work to compute the value of scrap?

A. No, not in my department, I am not.

Q. Do you know anything about the scrap value?

A. No; that is taken care of in another division.

Q. In computing the scrap value of automotive universal joints, would that be within your knowledge?

A. Not the actual value. The price of scrap fluctuates. In fact, I do not have any contact with selling of scrap, at the present time or in the past.

Q. You have never been called upon to evaluate metal for scrap, is that correct?

A. No, sir, I never have.

Mr. Harr: Your Honor, I want to introduce in evidence some of these gears. They have been marked as pre-trial exhibits.

Mr. Tongue: I thought all the exhibits were in evidence.

(Testimony of William J. Burgoyne.)

The Court: They are all in.

Mr. Harr: They are in, subject to objection. Of course, we may want to examine some of them later.

The Court: They have all been admitted, subject to any [50] objection.

Recross Examination

By Mr. Tongue:

Q. Is it not a fact that this Special Offering was sent to scrap dealers in Portland?

A. Scrap dealers would come under the mailing list that we put out, yes.

Q. Then, this Special Offering was sent to them?

A. Scrap dealers, yes, that used that kind of material.

Q. I will ask you whether this Special Offering was sent to scrap dealers?

A. Not as scrap dealers, but under heavy hardware.

Q. You received no bids from them whatever?

A. As I recall, no.

Q. How did you determine \$75.00 was a fair price for this residue?

A. It was an oversight on my part, due to the fact that I had not investigated the type of material that was offered for sale, regarding the universal joints.

Q. How did you determine \$200 was a fair price, as it was previously offered? A. Pardon?

Q. Is it not a fact that this residue had been

(Testimony of William J. Burgoyne.)

offered for some \$200 before Mr. Jones came there?

A. I didn't know of any deal of that sort, no.

Q. Didn't you testify that you recalled that there was a \$200 figure placed on this residue for a time?

A. I don't know of any deal.

Q. Regardless of whether or not there was a deal pending, and anyone at that time interested in it, is it a fact, or is it not, that it had been discussed that the War Assets Administration should sell this residue for around \$200?

A. I don't recall.

Q. You would not deny it, would you?

A. I don't recall having anything to do with that deal.

Mr. Tongue: That is all.

Redirect Examination

By Mr. Harr:

Q. I will hand you Exhibits No. 4-A to No. 4-I, inclusive. Can you tell us, as pertaining to the particular items listed there, what the condition of them was?

A. Exhibit 4-A, dump body, R-3 condition. That is, usable with repairs. 4-B—

Mr. Tongue: I submit that is not proper redirect examination.

The Court: Try to get it all in one question, Mr. Harr.

Mr. Harr: Q. Proceed.

A. 4-B is in N-2 condition. That is, new. That was brass cock plugs.

(Testimony of William J. Burgoyne.)

4-c was in R-3 condition. That is, usable with repairs.

4-D was in N-1 condition. That is, new. [52]

Q. What is the item?

A. Kingpins. 4-E Norgren Lubricator, in No. 3 condition. That would indicate that it would be usable without repairs. It doesn't indicate whether it is N or R, but when it is just 3, it would be usable without repairs.

4-F Allis-Chalmers parts, spare parts, N-2. That is new.

4-G, miter gears, N-2. That is new.

4-H, N-2, universal joints. That is new.

4-I, chess wagon, O-4 condition. That is, usable without repairs.

Here are some more cock plugs, but that is all.

Mr. Harr: That is all.

(Witness excused.)

The Court: What are you trying to rescind? What did the defendant get?

Mr. Harr: The items that were just referred to by the last question. They were covered all in one sale and some of them were delivered.

The Court: They were all delivered to the defendant but the—

Mr. Harr: Universal gear joints.

The Court: What are you trying to rescind?

Mr. Harr: The entire transaction, your Honor.

Mr. Tongue: On that point, your Honor, I call the Court's attention to the fact that it was not

until four days ago that any claim was made by the Government that the entire transaction should be rescinded. At all times previously, including the position taken by the Government when it filed its original complaint in this case, the prayer was only that it should be rescinded as to the universal joints. There has never been, at any previous time, any representation made that the sale of the other items was not a valid sale.

The Court: How could you rescind the sale of the joints when he didn't get the joints?

Mr. Harr: Of course, your Honor, it was all in one sale, and we feel that we should ask for a rescission of the entire sale. We have asked in the prayer for alternative relief, at the defendant's election.

Mr. Tongue: Sales documents were issued, your Honor, and they warrant that the Government had the power to transfer title and, according to the War Surplus Act, when sales documents are issued, that would foreclose them, according to our position, claiming any mistake or lack of authority.

The Court: You fellows get to talking about everything except what I am asking you about. Let's get back to the original proposition.

Mr. Tongue: Yes.

The Court: Stay with my first question. We will deal with [54] other things later. What was there to rescind if he did not get delivery?

Mr. Harr: According to what counsel has just stated, under the law, when a sales document is issued, title has passed, title transfers. That sec-

tion of the Act, if I may read it, provides: "A deed, bill of sale, lease or other instrument executed by or on behalf of any Government agency purporting to transfer title or any other interest in property under this Act shall be conclusive evidence of compliance with the provisions of this Act in so far as title or other interest of any bona fide purchases for value, or lessees, as the case may be, is concerned."

The Government takes the position here that probably title has passed but we contend he was not a bona fide purchaser.

The Court: What you want to rescind is the document?

Mr. Harr: That is right, the sales document.

The Court: You want him to produce that in court for cancellation or correction in some way and give it back to him?

Mr. Harr: Yes.

The Court: What is this case referred to in the Circuit Court? What is that?

Mr. Harr: That was a case, your Honor, filed by the defendant for replevin.

The Court: What defendant?

Mr. Harr: The defendant Jones, the same party.

The Court: What happened to that case? [55]

Mr. Harr: That is pending, by stipulation of counsel, pending determination of this case.

✓ The Court: What do you do with this warranty clause in the Act? How do you get around that?

Mr. Harr: We say, your Honor, he is not a bona fide purchaser, and that is the only way legal title

would pass, if he is a bona fide purchaser. The Act says that the title is conclusive, as far as any other interests, of any bona fide purchasers in this case for value.

Mr. Tongue: Your Honor, we have considerable replies to that contention. If you want to hear them now we will be glad to state them. In the first place, we say there isn't any evidence, and we don't think there is, and the burden is upon the Government. Mr. Burgoyne doesn't remember anything that was said. Mr. Webb's only recollection is that this man, whom he knew had worked at the shipyards, said, "Well, what will I do with all this junk", and that in talking about that reference was made to the chess wagons. That is absolutely all of the evidence that has been submitted to establish that this man is not a bona fide purchaser, and we submit that is insufficient.

In addition to that, we submit that even if Mr. Jones is not a bona fide purchaser that the Government has not—Of course, it hasn't completed its case yet—but we submit there is no mistake in this case, either mutual or unilateral; and that there wasn't any lack of authority to make this sale since [56] we will show it was approved by Mr. Zanon who did admittedly have authority to make sales in this amount.

There are a number of other contentions that we make. They are all summarized and listed.

The Court: Yes, but I don't want to read that. You go on and tell me. I don't want every little point you make—You are a great point lawyer.

Mr. Tongue: Well, those are the first points that we have, your Honor. Then we also contend in this case that this question of whether or not there was a mistake made as to whether this was automotive equipment or not—and that constitutes their first two contentions—we say that is wholly immaterial, and we have shown by Mr. Burgoyne's deposition that it didn't make any difference. Even if he had known it was automotive equipment, there would have been no change in the program whatever; and then we contend, as I have mentioned, that there can't be a partial rescission of a contract, and up until four days ago there has been no attempt to rescind anything other than the sale of these joints. And in that connection I would like to call the Court's attention to a case that we rely on quite heavily. It is *Railway Co. vs. McCarthy*, 96 U.S. 258. That was a case in which the claim was made on trial that a contract was invalid as having been made on Sunday, and with the Sunday laws prevailing at that time—

The Court: They still prevail. It is still against the law to do a lot of business on Sunday. [57]

Mr. Tongue: Yes, that is right.

The Court: You can't give a note on Sunday, a good note.

Mr. Tongue: But what the court said—That was not raised originally and, not having been raised originally,—when a party gives a reason for his conduct and decision touching anything in an action in controversy he cannot after litigation is begun

change his ground and put his conduct on a different consideration.

The Court: What does a bona fide purchaser mean? We roll that off our tongue all the years we practice law. What does it mean?

Mr. Tongue: Well, in this, I think, your Honor, it means simply this, that anybody going out to the War Assets Administration with knowledge of their practices, the great bargains that have been made there, is a bona fide purchaser when he buys something, even though he thinks that he may be able to turn around and sell it for a lot more than he has to pay for it, even though he knows that the Government may, and very often has, sold goods for a fraction of their original cost, that doesn't destroy his status as a bona fide purchaser, we submit, because many of these are special items that have no standard use, could only be sold for scrap.

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The Court: What is the mistake the defendant is supposed to have made?

Mr. Tongue: He hasn't developed that. I am not entirely [58] clear what they do claim.

The Court: What is the mistake?

Mr. Harr: Well, your Honor, originally this was based on mutual mistake, and, after all this comes up, after pre-trial conference, the defendant for the first time puts us on notice, "I knew all about this."

The Court: The mistake is out the window, then?

only mutual mistake

Mr. Harr: That is true.

The Court: All right, now, then, what has he

done that excepts him from the bona fide-purchaser provisions of the statute? What has he done wrong that makes him something other than a bona fide purchaser?

Mr. Harr: Well, in the first place, he misled them by his conduct. He indicated it was a "bunch of junk." He knew all the while and kept it silent as to what its true value was. He knew and he says that he knew the nature and the use of this material and the value of it, and there is a record in the pre-trial record that he knew and knew all the time, and certainly if he knew that—and as he said in his amended complaint filed in the Circuit Court case where he went on oath and said it is worth \$39,000 and some odd figures,—then he certainly is taking advantage of the Government employee. He knows that we don't know and calls it a "bunch of junk."

Mr. Tongue: I think we are anticipating some of the evidence here. [59]

Mr. Harr: It is unconscionable and does not follow the terms of the Act and the objects to be accomplished in this Act.

Mr. Tongue: I think Mr. Jones should be permitted to testify on that before there is any ruling made because that is an important phase of the case.

The Court: I just want to find out what it is all about.

Mr. Tongue: Yes, that is it. We have a good many answers to that that will develop with the evidence.

The Court: It seems to me that the case comes down altogether to whether he is a bona fide purchaser under all the circumstances, Mr. Harr.

Mr. Harr: And, of course, your Honor, we certainly attach great reliance upon the fact that here is merchandise of a declared value, and it is set forth in the Act that they cannot sell beyond—

The Court: Two things, then. They exceeded their authority, and that he is not a bona fide purchaser in the Act, that his conduct was unconscionable.

Mr. Harr: And the act could not be valid because it didn't comply with the objects of the Act, and I think that is mandatory.

The Court: What do you mean now; what are you saying now?

Mr. Harr: By a reference to the objectives, the Congress hereby declares that the objectives of this Act—

The Court: I know about that. There are two points in the case. Now, then, (1) where there was an excess of authority, and [60] (2) whether his conduct was so unconscionable as to make him other than a bona fide purchaser within the meaning of this Act. That is what this case is about, isn't it?

Mr. Harr: And (3), under the Act itself that they could not have—Maybe your Honor is combining that—that he exceeded his authority and that he didn't have authority to make that size of a sale. That is one lack of authority. And the second lack of authority is under the terms of the Act itself—

Another point - whether the Act is valid or not.

Mr. Tongue: May I just state very briefly—

The Court: What is the other point about lack of authority?

Mr. Harr: Where he exceeded his authority, that in other words the declared value of this merchandise—

The Court: I have that. What is the other?

Mr. Harr: And the other is by virtue of the terms—

The Court: Don't read it; just say what it is. What was the other limitation?

Mr. Harr: It doesn't speak of limitation, your Honor. Your Honor has perhaps read that.

Mr. Tongue: If he was a bona fide purchaser, that is conclusive evidence of compliance with the Act.

Mr. Harr: (Reading) "to foster the wide distribution of surplus commodities to consumers at fair prices;"—"to discourage disposal to speculators;"—sales to be made at a price so that they couldn't dispose of it for speculative purposes and for dumping upon the market. [61]

The Court: What are you reading from, the preamble?

Mr. Harr: The front part.

The Court: The preamble.

Mr. Harr: Yes, the objectives.

Mr. Tongue: Our reply is simply this, that if he is a bona fide purchaser it forecloses any argument as to authority to make the sale or that the sale is for any other reason not in compliance with the Act. We say, first, that there is no evidence

that he is not a bona fide purchaser, and we say, second, that they have at all times previously conceded he was in good faith and are now foreclosed from raising at this late point the claim that he is not a bona fide purchaser.

The Court: See what he says, that the warranty clause in the Act covers the matter of authority, extent of authority, too, Mr. Harr.

Mr. Harr: You mean what Counsel mentioned?

The Court: Yes.

Mr. Harr: I was reading, I wanted to quote this section.

The Court: Listen to this. He says the warranty clause in the Act covers the extent of your agents' authority, too, that even though your agent exceeded his authority, if he acted bona fide that the warranty clause covers it.

Mr. Harr: I am going to ask my co-counsel on that.

Mr. Conklin: Your Honor, we feel that although that states that, that is to protect the bona fide purchaser when the rest [62] of the Act is complied with. Surely it could not mean that any agent of the Government could bind it even though he did not comply with the Act.

The Court: It could mean it. Now we will take ten minutes and then we will go at it again.

(Short recess.)

Mr. Harr: Your Honor, I would like to recall Mr. Burgoyne for one question.

The Court: Ask him back there.

Mr. Harr: Mr. Burgoyne, have you ever seen these gears or gears like them?

Witness Burgoyne: No, sir.

Mr. Harr: You were located at Oregon Ship-yards?

Witness Burgoyne: Yes, sir.

Mr. Harr: I should also like to ask Mr. Webb the same question. Mr. Webb, at the time this sale was made had you seen the gears?

Witness Webb: No, sir.

Mr. Harr: Did you know what they were like?

Witness Webb: No, sir.

Mr. Tongue: Mr. Burgoyne, did you have a de-scription of the gears available to you at that time?

Witness Burgoyne: There was a description on the WAA4.

Mr. Tongue: Was that a complete and adequate description.

Witness Burgoyne: It was a short description.

Mr. Tongue: I will ask Mr. Webb the same questions. Did you have a description of the gears available?

Witness Webb: On the program?

Mr. Tongue: Yes; as described in the Special Offering 286?

Witness Webb: That is right.

Mr. Tongue: No further questions.

Mr. Harr: We will call Mr. Zanon.

LOUIS A. ZANON

was thereupon produced as a witness in behalf of plaintiff and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Harr:

Q. Mr. Zanon, you are employed by the War assets Administration? A. Yes, sir.

Q. And what is your official title there at this time?

A. Assistant Deputy Regional Director in charge of Disposal and Sales Planning.

Q. And on October 30, 1946, were you employed by the War Assets Administration?

A. Yes, sir.

Q. And what was your official title at that time?

A. The same title, only Acting.

Q. Now, Mr. Zanon, you are familiar with these gears, are you? [64] A. Yes, sir.

Q. And did you make a computation as to the scrap value of these particular gears themselves, eliminating the other items listed in the residue, just the gears? A. I did, yes, sir.

Q. And what was the value, scrap value at that time? A. At that time there was \$2,260.

Q. Is it greater or less now?

A. More, much more now.

Q. Now, there was a question asked about the breaking of these gears up, and so forth, in order to obtain the scrap value. What is the fact as to that?

(Testimony of Louis A. Zanon.)

A. Part of them would have to be broke up, but there is about 1,700, I believe, that could be shipped to the foundry direct. They are about 95 per cent brass. Of course, they would lose in shipping them to the foundry the steel contents, but they would recover the full value of the brass of the 1,600 or 1,700 of them.

Q. And you also heard the question asked why the scrap dealers didn't bid on it. Have you an explanation of that?

A. If they were programmed and listed as scrap we would have probably had bids from all over the country if the word "scrap" had been used at the time they were advertised for sale, but most of the scrap dealers, for some reason or other, are not too keen of going down these sales listings and reading the description [65] of all this material. They see that word "scrap" and, of course, that is what they are interested in and they know there is so many pounds of it, go out and take a look, figure the tonnage, and give you a bid on those bases.

Q. Now, did you, after this sale was purportedly made—Was there across your desk a certain document entitled WAA2a?

A. All the documents at that time came across my desk.

Q. I would like you to refer to Government's Exhibits 3-A to I, inclusive, the photostats. Now, I will ask you whether or not—what that indicates

(Testimony of Louis A. Zanon.)

to you when you look at it, under the front portion where the word marked "bid" is stated?

A. This indicates to me that this was closed out on a bid offering, that bids were accepted in our regular procedure, such as a program or a bulletin was sent out to our trade and we received bids in the normal procedure, and that it was abstracted by our Bid of Awards and awarded by that committee.

Q. Now, since this transaction took place, have you determined that it was other than on a bid basis?

A. Well, from the evidence presented here and, of course, from the evidence I gathered after I talked to Mr. Jones, I discovered that it was a negotiated rather than a bid sale.

Q. Now, on the reverse side of one of those forms, the one pertaining to the gears in this case, I notice your signature. Would you refer to that, please? A. Yes, sir. [66]

Q. Does that indicate that you have ratified and approved this particular sale?

A. No, I would say not. That merely indicates that I authorized the sale of the material on those bases, on a bid basis, closed out on a regular program. We have no reason to hold these up when they come across the desk and they indicate they were sold under a regular procedure on a bid basis that was closed out on a program.

Q. Well, what happens when they are sold on a

(Testimony of Louis A. Zanon.)

bid basis? Does that go before a board or something?

A. We will have to go back to this program. We will take this, for example, 286, which was distributed to the various automotive dealers and scrap dealers. We have a date set for the opening of that program; that is advertised for no less than fifteen days and in some cases it will run twenty days, twenty-five or thirty days. On that specified closing date—If you will notice on the heading of that brochure it says, “Bids will be accepted up to 2:00 p.m.” February or January the 1st, whatever the date may be. Those lists are sent to us and they are deposited in a sealed bid box and opened at the time of the opening by our Awards and Allocation Branch. All the bids are opened at that one time and an abstract is made and they determine whether the price is satisfactory, in accordance with our upset prices, and they are allocated on those bases, taking into consideration priority claimants that might come in first; then it goes down to commercial levels.

Q. In other words, when the word “bid” is there, it indicates that board has passed on the sale and approved the sale? A. That is correct.

Q. And you are merely approving what you assumed the board had done?

A. That is correct.

Q. Now, what would have been the case had that been marked properly, as you indicated, if the word “negotiated” had been in there?

(Testimony of Louis A. Zanon.)

A. If the word "negotiation" would have appeared in there, why, of course, we would have to hold the thing up and find out who made the sale and on what basis it was made. It was just a matter of checking the various sales that come across the desk that require we sign these documents, and we question only those that indicated they were sold other than on a fixed price or a bid basis.

Q. Now, did you later become acquainted with Mr. Jones personally? A. Yes.

Q. Would you state the circumstances under which you——

Mr. Tongue: Your Honor, I submit that what happened after this sale was consummated, any contact between Mr. Zanon and Mr. Jones, has no bearing on this case, particularly. The issue is whether he was a bona fide purchaser.

The Court: Maybe he is going to show an admission Mr. Jones [68] made. Go ahead and answer.

A. Several days after this sale was made—I don't know whether it was two days or three days or four days—Mr. Jones was brought to my desk by one of the men in the automotive section and he introduced Mr. Jones to me, and Jones told me about his purchase of a large quantity of material, approximately \$60,000 worth.

Mr. Harr: Q. Did he use those figures?

A. Yes. And he told me what he had paid for it. And I said, "Mr. Jones, I am sorry, but right now I can't answer your question. I will find out

(Testimony of Louis A. Zanon.)

more about it." I went back to the automotive section and questioned the boys there as to just what had taken place and they told me he had bought these universal joints and some truck bodies and a few other items, and they told me the basis that they made the sale on, and I went back to Mr. Jones and asked him if he knew at the time that he was getting this exceptional bargain for that much money and he said he did, and then I told Mr. Jones that I didn't blame whoever was stopping the sale but that there was nothing I could do, that he had better go back and talk to our Regional Counsel, Mr. Stocklen; and I saw Mr. Jones one time after that in the hall and he told me then that he had an attorney. That is the last time I had seen him up until today.

Q. Did he tell you about his experience working in the shipyards and how he became acquainted with the value of these gears? [69] A. No.

Q. He did say that he knew at the time that it was \$60,000?

A. Well, he mentioned a figure of sixty. I don't know whether he said 65 or 63. He mentioned \$60,000, in the sixties.

Q. Do you know whether the authority that was given to Burgoyne and these other salesmen, whether that was on a fixed-fee price, or did it also include a negotiated—

A. I believe that at that time all signatures on documents were limited to fixed price.

Q. In other words, would Mr. Burgoyne have

(Testimony of Louis A. Zanon.)

had authority at that time to have made a negotiated sale?

A. I wouldn't say definitely, but I don't believe that his signature would have authorized the sales.

Mr. Tongue: Testimony as to the authority of another is thoroughly incompetent.

Mr. Harr: Q. You were over Mr. Burgoyne?

A. That is correct. Of course, these procedures change so rapidly—but at that time I am almost sure they were limited to the fixed price only, a hundred thousand dollars or fifty thousand dollars, providing it was sold on a fixed-price basis.

Q. Would that include, then, a negotiated sale?

A. That is correct—No, it wouldn't include a negotiated sale, no.

Mr. Harr: You may inquire. [70]

The Court: No limitation as to authority of negotiated sales?

Mr. Harr: Q. Do you mean they have authority or not authority?

A. They did not have the authority to negotiate a sale under the fixed price.

The Court: What does that mean?

A. Fixed price is determined.

The Court: I know what that is, a fixed price. Your man couldn't sell something that cost the Government more than \$50,000. Where he negotiated the sale was there such a limitation on his authority?

A. Yes, absolutely there was a limitation.

He could miss it with

(Testimony of Louis A. Zanon.)

The Court: What was it?

A. They didn't have the authority at that time to negotiate a sale.

The Court: The point now is that they couldn't negotiate any sale?

Mr. Harr: Is that your testimony?

A. You could negotiate a fixed-price sale.

The Court: I don't understand that.

Mr. Harr: Q. Explain to the Court how they normally proceeded with a fixed price——

The Court: Oh, don't go over all that again. That isn't necessary. Two witnesses have said there are three things that [71] could be done. One was a fixed-price sale, another a sealed bid, and, third, a negotiated sale. Now, he says they couldn't negotiate any sale. By "negotiate" we mean whatever price the parties agree on.

Mr. Harr: Well, I may be incorrect, but I understood that on these commodities there is a fixed price placed on them and then underneath that fixed price they are not entitled to negotiate. If I am wrong, will you correct me?

A. How is that again?

Q. There is a fixed price fixed on commodities?

A. On certain commodities, yes.

Q. And below that fixed price these gentlemen would not have authority to negotiate a sale, is that correct?

A. The fixed price in this case would have been the price of scrap.

(Testimony of Louis A. Zanon.)

The Court: Here is what has been testified to previously, Mr. Harr: That the limitation was determined on what the property had cost the Government. Do you agree with me that is the testimony.

Mr. Harr: That is the declared value, your Honor.

The Court: And that is what it cost the Government?

Mr. Harr: That is correct.

The Court: That is what we have heard previously.

Mr. Harr: That is right.

The Court: Now, then, and that this man, the other man, had [72] a limit in dollars of \$50,000 and another \$100,000, and so on. That is what it cost the Government. This particular property cost the Government what?

Mr. Harr: Well in excess of \$62,000.

The Court: In excess of \$62,000. Now, what is he saying now about authority? This was a negotiated sale, according to one theory. What limitation was there on the authority of Mr. Burgoyne to negotiate the sale if this was a negotiation?

A. It was limited to \$50,000 in any type of sale, any method.

The Court: All right, we understand that. \$50,000 cost price to the Government?

A. That is right.

The Court: Go ahead.

(Testimony of Louis A. Zanon.)

Mr. Harr: You may inquire.

Cross-Examination

By Mr. Tongue:

Q. Mr. Zanon, I understand that you were the Regional Deputy in Charge of Disposal at that time? A. Acting.

Q. Acting?

A. Assistant Deputy Regional Director. I had the Director over me.

Q. Did you have authority in that capacity to sell these goods? A. No, sir.

Q. On any basis? [73]

A. Oh, on a fixed-price basis, yes.

Q. Would you have had authority to sell these goods on a negotiated basis?

A. At the fixed price, yes.

Q. You mean to tell me once a fixed price is set on a commodity it can't be sold at any less than that fixed price?

A. That is correct, yes, sir.

Q. And what did you say was the fixed price on these goods?

A. The scrap value of those goods was \$2,260.

Q. Now, how is that shown to be the fixed price that was placed on those goods?

A. By the metal contents.

Q. Where on these documents does that appear to be the fixed price?

A. Well, it is possibly not on those documents. There are a lot of other documents that we work with besides the WAA4.

(Testimony of Louis A. Zanon.)

Q. You mean to tell me, then, that nobody had any authority to sell these goods for less than \$2,200?

A. \$2,200—Oh, it could vary somewhat on a bid basis providing it came up somewhere near the scrap value. If there was a hundred or two hundred dollars difference they wouldn't kick it out.

Q. You say if bids were received and the bid was lower than scrap value you would take it, is that right?

A. If it was anywhere near the scrap value.

Q. But if no bids were received and you had it left over you [74] wouldn't sell it for less than \$2,200?

A. We would sell it.

Q. You wouldn't sell it for less even if there were no bidders?

A. We wouldn't have to sell it for less.

Q. Now, Mr. Zanon, you signed this Form WAA2, did you not?

A. That is correct.

Q. And by signing it you purported to give approval to that sale, did you not?

A. Not this particular sale, no.

Q. What do you ordinarily mean when you sign a Form WAA2?

A. I mean we have authorized it as far as the heading on this document is concerned.

Q. Who ordered this residue to be put up for sale for the best offer? Did—

A. I can't tell you.

Q. Did Mr. Williams do that?

A. I understand he had a hand in it.

(Testimony of Louis A. Zanon.)

Q. Was he the Chairman of the Awards Committee? A. That is correct.

Q. Is it the Awards Committee that you say passes on these bid sales?

A. The Awards Committee passes on the bid sales in conjunction with a Commodity Chief, Sales Manager, and Assistant Sales Manager.

Q. And you say when it has been approved by the Awards Committee as a bid sale you don't read any further? [75] A. That is correct.

Q. And still it was the Chairman of the Awards Committee that authorized this to be done, is that right? A. I don't know that.

Q. Now, after this sale was made to Mr. Jones by Mr. Burgoyne, did Mr. Burgoyne bring that Form WAA2 to your desk at that time?

A. No, sir.

Q. He didn't do that? A. No.

Q. Did he ever explain this sale to you?

A. No.

Q. Did he ever tell you that it was a residue left from a bid offering? A. No.

Q. Who first questioned this sale?

A. Who first questioned it?

Q. Yes.

A. As far as I know, the first time I knew about it was when Mr. Jones and one of the men in the office—

Q. Well, who questioned the authority to make the sale?

(Testimony of Louis A. Zanon.)

A. Who questioned the authority to make the sale?

Q. Yes; who raised the question of illegality?

A. Well, there were several of them at that time.

Q. Did Mr. Gibson of the Maritime Commission raise it first?

A. I couldn't tell you that. [76]

Q. Was it his refusal of delivery of these goods that raised the question?

A. I couldn't tell you that. I understand that from Mr. Jones, but whether that was the determining factor or not I don't know.

Q. Did Mr. Gibson ever question sales before?

A. Yes.

Q. Has any sale ever been rescinded before as a result of his questioning it?

A. Well, questioned on what basis? Let's get back to that.

Q. On any basis. A. He has, yes.

Q. What is that? A. He has, yes.

Q. Has any sale ever been rescinded?

A. Through his—

Mr. Harr: Just a moment. I thought your Honor had passed on this very point previously.

The Court: Yes, but you will have to call it to my attention.

Mr. Tongue: I withdraw that.

The Court: It may be withdrawn.

Mr. Tongue: Q. Was that Form WAA2 given the purchaser?

A. Form WAA2?

(Testimony of Louis A. Zanon.)

Q. Yes; or is this an inter-office memorandum?

A. This is an inter-office memorandum.

Q. It never goes to the purchaser? [77]

A. Well, we do in some cases—There are three copies, and it has been used sometimes in sales, I believe, but the normal procedure is the WAA2 is used in the office for billing purposes.

Q. Do you claim in this case the WAA2 form was given to Mr. Jones? A. No.

Q. Do you claim he had any document concerning these goods until he received the Form WAA1 called the sales document?

A. I would say he didn't have anything until he received his copy of the WAA1. I don't know.

Q. Now, when he came in and talked to you later, as you say, and said these goods cost the Government \$60,000—

A. I don't know that he said \$60,000 exactly. In the neighborhood of \$60,000.

Q. Yes. Did he say when he found that out?

A. Did he say when he found it out?

Q. Yes. A. No.

Q. Did he say he knew that at the time of the sale?

A. I asked him if he knew what he was buying and he said he did.

Q. Well, when you asked that question, how did you put it; did you say, "Do you know what you are buying?"

A. When I went back to Mr. Burgoyne's department and inquired about the sale I came back and

(Testimony of Louis A. Zanon.)

asked Mr. Jones if he knew that he was getting that much material for that much money. [78]

Q. What did he say?

A. He said, "I sure did," and he said, "I intend to get it, too."

Q. All right. Now, you say that the reason why no bids were received from the scrap dealers was because this wasn't described as scrap, is that right?

A. I didn't say that was the reason for it. I said if it had been described as scrap that we would have received numerous bids.

Q. Do you always describe goods as scrap in special offers that you send to the scrap dealers?

A. When they are goods of a special nature we do declare a lot of it scrap.

Q. And do you ever get bids from the scrap dealers on offerings that don't describe goods as scrap?

A. When they know what they are bidding on. Most of these scrap dealers have sidelines such as machinery, pipe, steel, and we receive bids from them, yes, but when it is a specialized item that they are not in the habit of handling, we don't, unless it has been declared scrap and listed as scrap.

Q. You swear, then, you never get bids from scrap dealers for goods they are going to use as scrap unless you name it as scrap?

A. Oh, I didn't make that statement, no.

Mr. Tongue: That is all.

Mr. Harr: Just a moment. [79]

(Testimony of Louis A. Zanon.)

Redirect Examination

By Mr. Harr:

Q. Coming back to this authority to sell or negotiate sales, are the type of sales that you are talking about—Who in your organization was allowed to sell that kind of merchandise?

A. Who in the organization? Well, that would be a concurrence. In other words, if a salesman went out and they got an offer on this material, why,—we receive many offers on material—and it is taken up with the different people in the organization and we receive a concurrence from the three or four people on this board to determine it, and they would naturally sign those documents of negotiation, and that is the reason I said that if it didn't meet the scrap value it would have to come awful close to it, and the Award Committee, in conjunction with the Sales Manager, would get together and review the thing to determine it.

Q. Now, would that be on the bid or negotiated sale? A. That would be negotiated.

Q. Did you sign the WAA1, the copy of the document?

A. The WAA1—I signed the WAA2.

Q. The inter-office form? A. Yes.

Mr. Harr: We have no further questions of this witness, your Honor, and the Government rests.

Mr. Tongue: I won't argue it, but for the record I would like to move for an involuntary nonsuit.

The Court: Reserve the ruling.

Mr. Tongue: Call Mr. Jones.

HERBERT A. JONES, JR.,

defendant herein, was thereupon produced as a witness in his own behalf and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Tongue:

Q. Your full name is Herbert A. Jones, Jr.?

A. That is right.

Q. And you are a veteran?

A. That is right.

Q. And you are waiting to go back in the service on Friday, is that right? A. Yes.

Q. Now, when did you first come in contact with the War Assets Administration?

A. Well, it was some time shortly after I got out of the service, in May. I got out in May, and it was probably in the summertime of last year.

Q. And it was in late October when you went out to buy these Jeep motors, is that right?

A. That is right.

Q. And you bought this residue of goods?

A. That is right. [81]

Q. Now, at the time that you went out to buy those Jeep motors and bought this residue, had you heard anything about the sales practices of the War Assets Administration?

Mr. Harr: Your Honor, I object to that; I think it is incompetent, irrelevant and immaterial.

Mr. Tongue: Your Honor, I submit it is very competent.

The Court: It goes to the bona-fideness.

(Testimony of Herbert A. Jones.)

Mr. Tongue: That is right.

The Court: Continue.

Mr. Tongue: Q. Had you heard of the bargains that were available at the War Assets Administration?

A. Yes, I had. That is why I went out there.

Q. What were some of the specific bargains you had heard about at that time?

A. Well, I heard about the—

The Court: Don't go into too much detail, Mr. Tongue.

Mr. Tongue: Q. Had you heard of a number of instances in which goods had been sold by the War Assets Administration at a very small fraction of the original cost to the Government?

A. Several, yes.

Q. At the time you went out on this transaction you had that in your mind, is that right?

A. Well, not exactly. I did have it in my mind of getting a bargain, because that is the only reason I bought it, because I could get it for less. I wouldn't have gone clear out there [82] to buy it if I could buy it in town for less.

Q. Now, when did you first go out concerning the Jeeps, the Jeep engines?

A. Well, it was about, I imagine, about the 15th of October, just shortly after I bought a Jeep.

Q. And what were you told?

A. I think the first time I went out there I was told that there weren't any available.

Q. Did you go back later?

(Testimony of Herbert A. Jones.)

A. Yes, I went back several times.

Q. What did they tell you the next time you went back?

A. Well, one time—I don't know whether it was the next time or not—they told me there were two engines available, they weren't new but I could probably make one new one out of them.

Mr. Harr: Could you speak louder, please.

A. That I could probably make one new one out of them by putting the two together, and I would have to buy a bunch of other stuff because they were residue of a bid sale.

Q. Who told you that?

A. I believe Mr. Webb told me that.

Q. Did they tell you what you would have to pay for that residue?

A. Yes; the first time they told me nine hundred and some odd dollars. I don't remember the exact price. It was between nine hundred and a thousand dollars. [83]

Q. Did you go back later to inquire concerning the Jeep engines and that lot of goods?

A. Well, I found out it was still there, hadn't been sold, and I asked them if they had come down on the price, and they told me, I think, right close to \$250.

Q. I see. Did they tell you anything else at that time? A. Oh, no, not—

Q. Who told you that, do you remember?

A. No, I don't.

(Testimony of Herbert A. Jones.)

Q. Now, did you go back later and make any further inquiries?

A. No, I believe I called them the next time. I used to call them every once in a while to find out what they had.

Q. What did you ask when you called them?

A. Well, I asked them if those Jeep engines were still available.

Q. Did you ask whether the entire lot was still available? A. Yes.

Q. And what were you told?

A. I was told that it was.

Q. Were you told that any price had been fixed on that lot?

A. Yes, they told me \$75.00 was fixed on that lot.

Q. What did you do then?

A. I took a check up, told them I would take it, and took a check up to buy it.

Q. Who were you referred to when you reached the War Assets office? [84]

A. Well, I first went to the information girl and she sent me back to the machinery division, back to Mr. Webb.

Q. And what did Mr. Webb say to you?

A. He told me that there was a lot, that there was two Jeep engines for sale but I would have to buy several other items to get the two Jeep engines.

Q. Did he show you what the other items were?

A. Yes.

(Testimony of Herbert A. Jones.)

Q. Did he show you a written description of them? A. Yes.

Q. Was there any particular discussion of the gear joints?

A. No, I don't believe there was any particular discussion, no.

Q. Did you know then what these joints were?

A. Well, only in a speculative value. I knew they were worth—that they probably cost the Government considerable more than what they were selling for, but that didn't mean to me what they were worth to me. They were worth to me only what I could—

Q. Did you have any idea what you could get out of them?

A. Not at the time, I didn't know the market value.

Q. Were you told the residue was offered to scrap dealers? A. Yes.

Q. And you were told no bids came on this and this was residue?

A. I don't know whether I was told no bids or not, but I was told it was residue.

Q. Did you have any idea what the value of the goods was at that [85] time, other than that it had a substantial value but of an unknown quantity?

Mr. Harr: Your Honor, I would like to call attention to the fact that we agree that they knew that—it was in the pre-trial order—and at the time of the sale—I will read the brief. He says, “That both defendant and plaintiff's representative at the

(Testimony of Herbert A. Jones.)

time of the sale were fully familiar with the nature, use and value at that time."

Mr. Tongue: Yes, you people say yourselves you don't know what it is worth excepting that it had some substantial value, and that is what we say. We don't know exactly what it was worth, a substantial value, but we didn't know what it was; it was purely speculative as I understand it.

Q. Did you think you would be able to sell these goods for anything other than scrap?

A. Well, I didn't know at the time what the present demand was. That was what limited whether I could sell them or not.

Q. Yes.

A. If there was no demand, I had to sell them for scrap.

Q. Now, what did Mr. Webb do after that conversation that you had with him—First, let me ask if anything else was said between you and Mr. Webb?

A. I don't believe so.

Q. What happened then?

A. Well, Mr. Webb was pretty busy right then; he had several [86] things to take care of, and he told me I would have to go to Mr. Burgoyne. So Mr. Burgoyne was to the next desk to him, so he turned in his receipt and gave Mr. Burgoyne the papers and I went over and saw him.

Q. What did Mr. Burgoyne say?

A. Well, he talked to me some about the universals and everything that was on there and just where I could probably sell them, something that

(Testimony of Herbert A. Jones.)

I was getting a good buy for my money, that they had been laying around there for quite a while and they wanted to get rid of them.

Q. What was that?

A. That they had been laying around there for quite a while and they wanted to get rid of them.

Q. Did he tell you where the joints were?

A. Well, I could read where the joints were. It was written on there "Oregon Shipyards."

Q. And he showed you that description contained in the Special Offering, is that right?

A. Yes.

The Court: Where is your home?

A. 3024 Northeast Fifteenth.

Mr. Tongue: Q. Did he give you any sales talk on this thing?

A. Well, some, yes. He told me approximately where—He just more or less, I think, was talking about where I might be able to sell them. He wasn't sure. [87]

Q. Did he tell you he thought this was a bargain for you?

A. Yes, he told me probably I would sure get my money back out of them.

Q. Did he tell you what the price was?

A. No.

Q. I mean what the Government would sell it to you for? A. Yes, he told me \$75.00.

Q. So, as far as you know, was that anything other than the price the Government had fixed on those goods?

(Testimony of Herbert A. Jones.)

A. No. It was a fixed price as far as I knew.

Q. Now, Mr. Jones, what did you then tell Mr. Burgoyne?

A. Well, I don't know other than that I told him I would accept the sale, I would buy the gears.

Q. Did you give him a check?

A. Yes, I gave him a check.

Q. What did he do then?

A. Well, he took, said he had to get the sale approved, Mr. Zanon's desk, I think, was in the corner at that time, and he took the papers and went over to Mr. Zanon.

Q. Did you see him do that? A. Yes.

Q. Did he come back later?

A. Yes, he wasn't there but a few seconds.

Q. Did he say that Mr. Zanon had approved the sale?

A. No, he didn't say, but he told me that the receipt and everything [88] would be mailed to me.

Q. And did he say that the sales documents would be mailed to you?

A. He didn't say, but they were.

Q. And that was on October 30th, as I understand it, in 1946, is that correct?

A. Well, I can't remember the date, but that was right close to it.

Q. About when did you receive the sales documents? A. Oh, I imagine about a week later.

Q. Would it be about the 5th of November?

A. That is about right.

Mr. Tongue: May it be understood that these

(Testimony of Herbert A. Jones.)

same exhibits we have marked are also in evidence subject to objection?

Q. And you received a receipt for your check at that time, is that correct?

A. Yes. It was mailed to me.

Q. What did you do then?

A. Well, I waited—I was told when I went up there I would have to wait a few days after I got the sales documents before I could pick up the equipment I purchased.

Q. So what did you do?

A. So I think I waited until, it seems to me I waited until Saturday, and started to pick some of the stuff up. It was shortly after that, though. I waited a couple of days. [89]

Q. Did you then go and pick up some of the items that you were sold?

A. Yes, I picked up—I was told that—I didn't want the chess wagons, but I was told that if I didn't pick them up they would ship them to me and charge me the freight on them, so I went down and picked them up.

Q. And you picked up various of the other items, did you?

A. Yes, I picked up all the other items.

Q. Did you go out to the Oregon Shipyard to pick up these gear joints? A. Yes.

Q. And what happened when you arrived there?

A. Well, they delivered the miter gears to me, which were at the same shipyard.

(Testimony of Herbert A. Jones.)

Q. Were those miter gears part of the same sale?

A. Part of the same sale, yes. And the guard, I had to get the papers before I could get delivery on it, and I couldn't get the papers on it because Mr. Gibson seems to have tied them up.

Q. Who is Mr. Gibson?

A. He was the big boss out there.

Q. I see. So you weren't able to take delivery on the gear joints on that day, is that correct?

A. No.

Q. Did you go back later to try to get delivery on them? [90]

A. Yes, I went back several times.

Q. The next time you went back did you see Mr. Gibson?

A. I believe I did. I know he stalled me off for a long time, wouldn't hardly see me, so I finally, I just waited for him until he got ready to see me.

Q. And what did he tell you?

A. Well, he asked me if I knew what the universals were worth.

Q. What did you say?

A. And I told him that I knew they were worth more than I paid for them or I wouldn't have bought them.

Q. What did he say then? Did he tell you what they cost the Government?

A. Yes, he told me, he said the scrap value, he said the scrap value is worth about \$2,200, and he told me that the cost of them was around \$66,000.

(Testimony of Herbert A. Jones.)

Q. Prior to that time did you have any information that that was the cost to the Government of those gears?

A. Not as to the cost to the Government, no.

Q. That was the first time you were apprised of the cost to the Government of those gears?

A. That is right.

Q. And what else did he say to you? Did he say that the gears had been withdrawn?

A. Yes, he told me that he had a wire from Oakland to withdraw the gears. [91]

Q. From whom in Oakland? From the Maritime Commission?

A. From the Maritime Commission. I am trying to think of the guy's name—Hull, I think he said.

Q. What did you do then?

A. Well, I found out I couldn't get them, and he told me I would have to go back and talk to Bob Strong—that is the man at War Assets—and he blamed it all on them, said they were the ones that wouldn't deliver the universals.

Q. What did you do then? Did you go over to War Assets? A. I went back to War Assets.

Q. To whom did you talk to?

A. Well, I talked to Bob Strong.

Q. Did you talk to Mr. Zanon then?

A. I talked to Mr. Zanon, yes.

Q. Had you ever talked to Mr. Zanon before?

A. I don't believe I had ever talked to him before.

Q. That was the first time you ever met Mr.

(Testimony of Herbert A. Jones.)

Zanon, is that right? A. I think so.

Q. And Mr. Zanon has testified that you told him that you had bought \$60,000 worth of gears and you wanted delivery on them, is that what you said?

A. Well, I think that is what I said, because Mr. Gibson told me that is what they were worth.

Q. Had you known they were worth \$60,000, or cost the Government that, before you saw Mr. Gibson? [92]

A. No, I didn't know. I knew they cost the Government considerably more than I paid for them, but I didn't know whether they had any use for them. That was my impression, that they didn't have any use, that is why they sold them.

Q. Did Mr. Zanon claim any mistake had been made? A. No.

Q. Did he claim there was any lack of authority to make the sale? A. No.

Q. Did he claim that you were not in good faith?
A. No.

Q. He just told you that the sale was off, is that right?

A. Well, Mr. Zanon I don't believe was the one that said the sale was off. He just told me he couldn't do anything about it.

Q. Did you talk to anyone else at War Assets?

A. I talked to Mr. Stocklen, the attorney there.

Q. Did Mr. Zanon refer you to him?

A. Yes.

Q. What did Mr. Stocklen tell you?

(Testimony of Herbert A. Jones.)

A. He told me that he knew no way for me to get the universals.

Q. Did he say why the sale was called off?

A. No, but he said that there was an inadequate payment of the purchase price.

Q. I see.

A. And that I would have to go through the Court of Appeals in [93] New York to get the universals.

Q. What did you do then, Mr. Jones?

A. I went out to Hillsboro to see Mr. Bush.

Q. Did you talk to any other attorney before that?

A. I talked to Mr. Harr, Mr. Harr up here in the U. S. Attorney's office.

Q. Did you tell him the story?

A. Well, fairly well. I imagine I told him the biggest part of it.

Q. And I suppose he told you that the U. S. Attorney's office couldn't help you?

A. Well, he told me that they couldn't help me and that they would probably be called upon to defend the case if it came up.

Q. So then you referred to Mr. Bush?

A. Yes, that is right. I went to see Mr. Bush.

Q. What legal steps were taken following that, Mr. Jones?

A. Well, we filed suit shortly after that in the State Court against Mr. Mudge and Mr. Gibson for replevin.

Q. Trying to get the goods back?

(Testimony of Herbert A. Jones.)

A. Trying to get the goods back.

Q. What happened then?

A. Well, we got as far as our depositions, and got the depositions taken, and then they moved the goods over to Vancouver to get it out of State Court jurisdiction, I guess.

Q. Did you make anybody else a party to that case at that time? [94]

Mr. Harr: Your Honor, I don't see the materiality of this. It is going a little afield.

Mr. Tongue: This is a suit in equity, and the clean hands of the Government is material. They are asking to rescind.

Mr. Harr: We agreed to abate that action over then pending action here, and as to moving of these goods, counsel in their complaint asked for alternative damages.

Mr. Tongue: Well, so far as that is concerned,——

Mr. Harr: I don't get the materiality as to how it applies to this case, your Honor.

Mr. Tongue: I have nothing further to say, your Honor. I think it is material on the reason I have stated.

The Court: Sustained.

Mr. Tongue: Now, Mr. Jones, when was the first time that you were told that the Government challenged your good faith in this matter?

A. Well, not till just recently.

Q. In the last two or three weeks?

A. The last two or three weeks, that is right.

(Testimony of Herbert A. Jones.)

Q. Did they ever make any claim upon you before that you were in other than good faith?

A. No.

Q. Before that time did they ever make any claim that they didn't have the authority to sell these goods to you?

A. No. I figured out that that is what War Assets was set up [95] for, to sell, and I didn't know the price that each man was allowed to sell for.

Mr. Tongue: That is all.

Cross-Examination

By Mr. Harr:

Q. Well, now, you were in our office about three weeks ago, at the time of the first pre-trial conference, weren't you? A. Yes.

Q. At that time you told us that you had full knowledge of the use of these gears, the value, and that you worked in a shipyard and that is how come you knew, and that is what you said in our office, did you not, in my office?

A. I agree that I knew what their use was, yes.

Q. And the reason you knew was you had been in a shipyard? A. That is right.

Q. You had seen them and used them?

A. I installed them, yes, but I knew that they weren't manufactured very cheaply because of their nature.

Q. Now, you said also, you have testified, that it wasn't until just three or four days ago that you were notified that the Government was going to try

(Testimony of Herbert A. Jones.)

to rescind, not try to rescind but that they had no authority; let's put it this way.

A. Just a few days ago that they told me.

Q. You testified it was only two or three, three or four days ago the Government first notified you, the first notification [96] you had that they had no authority?

A. That is right, that they had no authority to make the sale.

Q. Did your attorney, Mr. Bush, tell you that on December 4, 1946, he received a letter from Mr. Mudge?

A. I believe he did, yes.

Q. Did he tell you there that the contents of the letter—I will quote it in part, "As a result we shall have no choice except upon receipt of this document to cancel the order of Mr. Jones, and we anticipate he will then enter a claim for the return of the money paid, which claim will be handled promptly." Did he tell you that?

A. He said they would anticipate it, yes, but I never did ask for the money.

Q. Well, didn't he tell you that Mr. Mudge at that time, as early as December 4 of 1946, wrote you that they had no authority to make the sale?

Mr. Tongue: That letter speaks for itself.

Mr. Harr: Just a moment. I am asking your——

Q. Is that correct?

A. No, I don't remember that he told me they had no authority to make the sale or not.

Q. Did he say here, "It would appear, Mr. Bush, that someone in the office erred in classifying the

(Testimony of Herbert A. Jones.)

material in question, namely, universal gear joints as automotive equipment. This, I understand, is a Maritime commodity and if this is the case it [97] should not have been offered by the automotive section." Did Mr. Bush tell you that?

A. Well, that was what was in the letter, yes.

Q. Did Mr. Bush tell you that? A. Yes.

Q. Well, then, you knew that back in December of 1946, that they were telling you that they had no authority to sell this.

Mr. Tongue: That calls for a conclusion.

A. No, they told me that was the automotive section, but they told me before that was the machinery section.

Mr. Harr: Q. But you testified that it wasn't until four days ago that you learned for the first time that they claimed they had no authority.

Mr. Tongue: Your Honor, this is——

Mr. Harr: Just a moment. Let me——

Q. Is that your testimony?

A. That is right.

Mr. Tongue: Your Honor, may I interrupt at this moment. The only grounds stated on this letter for the attempt to cancel the sale was that a mistake was made in classifying this as automotive equipment and that the Maritime Commission had withdrawn the goods. They never claimed in this letter that there was any lack of authority or that any other mistake had been made, and they never challenged his good faith in that letter. I think it is unfair to question him about it this way. [98]

(Testimony of Herbert A. Jones.)

The Court: You can put the letter in.

Mr. Tongue: It is already in.

Mr. Harr: Q. Now, did you say that Mr. Burgoyne took the check, your check, over to Mr. Zanon to be okehed? A. No, not the check, no.

Q. It was the inter-office sales document that they prepared?

A. Well, I don't know which document it was. I know he took some document.

Q. Well, they prepared a document while you were sitting there?

A. They didn't write it up. They took the Special Offering, I think it was.

Q. Some document; you don't know what it was?

A. Yes, that is right.

Q. You took the cash to the cashier, didn't you?

A. Yes.

Q. In fact, you didn't take it that day, did you?

A. Well, I don't even know whether I took it to the cashier or not, but I gave it to somebody to take to the cashier and they told me a receipt would be mailed, and I knew the check was good because it was a cashier's check and there wasn't any question about questioning it.

Q. That cashier's check in the amount of \$75.00?

A. That is right.

Q. And do you say that you had found that out over the telephone that they would accept \$75.00?

A. That is right.

Q. And that was for the residue?

A. That is right.

(Testimony of Herbert A. Jones.)

Q. And then you came down and talked to Mr. Webb and Mr. Burgoyne, is that right?

A. That is right.

Q. Did you tell Mr. Webb that you would buy it?

A. I believe I did. I think that is why he referred me to Mr. Burgoyne.

Q. That was before you were referred to Mr. Burgoyne? A. That is right.

Q. And then did you—And he told you that he had no authority to sell? A. No, he—

Q. That he had to have Mr. Burgoyne complete the deal?

A. He didn't tell me anything. He said he had some other customers waiting, said I had to step over to Mr. Burgoyne, didn't tell me why.

Q. He didn't tell you Mr. Burgoyne would have to complete the sale?

A. He told me Mr. Burgoyne would complete it, not that he had to.

Q. And you indicate now that Mr. Burgoyne, after you told him you would buy it, that he gave you a sales talk?

A. That is right. He was telling me where I could get rid of [100] everything.

After you had told him you would buy it then he volunteered the other information?

A. That is right.

Q. And he said it had been lying around there for a long time and he would like to get rid of it?

A. He said it had been lying around there quite a while cluttering up his desk, is what he said.

(Testimony of Herbert A. Jones.)

Q. Now, you got regularly in the mail these offerings; you put your name on record?

A. Up till the time of this sale.

Q. And you had Special Offering C-286, didn't you?

A. I imagine I did. I don't know—I learned of the sale through the mail, I think.

Q. Now, then, you knew that the bids, that they advertised that for bids, and it was advertised on about October 4, and they said bids would be received until 2:00 o'clock p.m., October 22?

A. Well, the only thing I got, the only time I ever got anything from bids, was from Fort Stevens.

Q. So, between October 22 and the date you went there, about October the 30th, the gears had been lying there then for about eight days; that would be right, wouldn't it?

A. That is right.

Q. So that is what Mr. Burgoyne meant when he said, "had been lying around there for a long time"? [101]

A. That is right—I guess so.

Q. Now, you testified that up till the time you went over to the Maritime Commission seeking delivery, that was the first time that you knew what the gears had cost the Government, that is your testimony?

A. That is right. I knew what they were used for, but I didn't know what they cost the Government.

Q. Did you know what they would cost anyone else?

(Testimony of Herbert A. Jones.)

A. No, I didn't know until I saw a catalog on the gears.

Q. Where did you see the catalog?

A. Well, M & M Machinery Supply mailed it to me.

Q. Where is that?

A. I think Camden, New Jersey.

Q. I beg your pardon?

A. I think their outfit was in Camden, New Jersey.

Q. I know, but where did you see the catalog?

A. After I got it out of the mail.

Q. Where? A. At my home, I guess.

Q. Did you send for it?

A. No, I don't believe I did.

Q. A catalog advertising these gears came to your house?

A. It was just kind of a circular catalog.

Q. Was that after this sale?

A. Quite a while, yes. [102]

Q. About how long after the sale?

A. Oh, I don't know; it was several months after the sale.

Q. Was that before or after you went to the Maritime yard? A. That was after.

Q. That was the first information you had on the value, then, is when they told you at the yard?

A. That is where I found out what they were getting for them. I knew they were worth money, yes, but I didn't know they were worth anything besides the scrap value.

(Testimony of Herbert A. Jones.)

Q. Well, you said they were worth money. What was your idea of money?

A. Well, whatever I could get out of them.

Q. Well, five cents would be money. What do you think about money, whatever you would get out of them?

A. Well, the scrap value is worth something, was worth more than I paid for them.

Q. Well, you knew when you were working for the shipyards that some of those gears were 90 per cent brass or more? A. That is right.

Q. You knew that and you knew how heavy they were? A. Approximately, yes.

Q. And you knew what brass was worth?

A. Yes, fairly close.

Q. So you could figure that in your mind, couldn't you? A. That is right. [103]

Q. So you knew when you were buying those gears they would be a scrap value over two or three thousand dollars; you knew that, didn't you?

A. Well, I didn't know at the time that they would weigh 24½ ton.

Q. Well, when did you come to a realization as to what those gears would be worth as scrap?

A. When Mr. Gibson told me what they would be worth. He told me how much weight there was there.

Q. He told you \$2,000.

A. He told me approximately \$2,000.

Q. In your pleadings that you filed over in the State Court in March this year you set forth the

(Testimony of Herbert A. Jones.)

scrap value was \$6,000. Did you compute that yourself, or had scrap gone up that much in that period of time?

A. Well, I think that was taken from the total weight. Now, I don't know—The total weight figures in the amount of steel in it, too.

Q. But you knew at least that they would be at the time of this sale, you knew they would be worth several thousand dollars, didn't you?

A. I didn't stop to think what they would be worth in scrap, no.

Q. Well, when you had received your Special Offering C-286 did you——

Mr. Tongue: He said he didn't receive it. [104]

Mr. Harr: Q. ——did you know the gears were for sale?

Mr. Tongue: Just a moment. He said he didn't receive that offering.

Mr. Harr: Q. Did you know those gears were for sale along with this other residue when you were talking over the phone, and these various other conversations you had?

A. When I talked to them over the phone—I knew they were for sale because I went up there one time and saw the list and I talked to them over the phone later on, mostly after they came down. They had been too high for me at first and I couldn't handle it at that time.

Q. How many times do you maintain you saw Mr. Webb?

(Testimony of Herbert A. Jones.)

A. Oh, I don't know exactly. I probably saw him two or three times.

Q. Was that when you were purchasing other materials over there?

A. Yes, quite a bit of the time, yes.

Q. Well, had you ever talked to him before this one occasion?

A. I talked to him about a larger engine, yes. I wanted a large engine, a Diesel engine.

Q. A Diesel engine? A. Yes.

Q. But that time and the time you talked to him about the Jeep motors, are those the only two items, or did you have other conversations with him?

A. Well, I talked to most everybody in that section several [105] times. I went over there quite often, every time I found out about a sale.

Q. Who quoted you a price of \$900 to \$1,000? Mr. Webb quoted you that price?

A. I don't remember who it was that quoted me the price, no, but they told me that the price was on it.

Q. How long before the date of the sale was that price quoted to you?

A. Oh, approximately ten days, a week or ten days.

Q. Could it have been more than that or less than that?

A. That was the first time, you say? It could have been more than that, yes.

Q. And then how many days later was it you came down and they quoted you another price?

(Testimony of Herbert A. Jones.)

A. Well, it was shortly, a few days before I actually bought the material; I don't remember just how many days it was, no.

Q. And then you called them up once in between there?

A. That is right. I think the second time, the time that I got a lower price on it, I mean they told me a lower price of two hundred some odd dollars was when I called them up.

Q. Well, when did you learn it was \$75.00?

A. The last time I went down there.

Q. That is when you went down there. How did you happen to have a cashier's check for \$75.00 if you already—How did you already know it was \$75.00? [106]

A. They called me. They told me—I called them on the phone and they told me it had come down to \$75.00, so I said I'd take it.

Q. Did you call them or did they call you?

A. They called me—No, I called them.

Q. And how long was that before the 30th of October that you got that telephone call or you called them?

A. Well, I think it was right close to the date I bought it if it wasn't the same day. I think it was the same day.

Q. So you think that between the first time you talked about this residue and the date of the sale was about ten days? A. Probably, yes.

Q. Did you have any idea who that was you

(Testimony of Herbert A. Jones.)

talked to—Did you call for anyone in particular when you telephoned in?

A. No; the person answered the phone I guess was the operator, and she asked me, I think she told me, "War Assets Administration" and I think I said, "May I speak to the Machinery Division?" and that is the division she gave me. I don't know who it was I talked to.

Q. And you had called frequently before that, had you not?

A. Why, yes, I called every time I thought I could buy something, every time I had a little extra money.

Q. You didn't go down to the yards and look these particular gears over yourself?

A. Yes, later on. [107]

Q. Later on, not before?

A. Not before, no.

Q. You didn't tell them that you knew, that you worked in the shipyard, did you?

A. No, I didn't tell them I worked in the shipyards.

Q. You didn't tell them that you knew the value of them, did you?

A. No, because I didn't actually know what I could get out of them.

Q. Beg pardon?

A. I said I didn't know what I could get out of them. That was the value as far as I was concerned at the time.

Q. But you didn't tell them you knew what type

(Testimony of Herbert A. Jones.)

of gears these were, that they had a lot of bronze and knew the value?

A. No, there was no reason to tell them I knew they had a lot of bronze on them.

Q. Did they tell you why they were classed in the automotive section? A. No.

Q. You knew that they were marine equipment, didn't you?

A. I knew they were marine equipment, yes, but that was not only the automotive, it was machinery. They had other things there, too. I knew some of the other stuff wasn't marine, and it was evident on the same sale that there was stuff that was, like those "Main" circulating pumps. Now, no automobile has a [108] "Main" circulating pump on it.

Q. "Main" circulating pump, you say?

A. That is what it said.

Mr. Harr: I think that is all.

Redirect Examination

By Mr. Tongue:

Q. Mr. Jones, when you talked with Mr. Burgoyne and Mr. Webb, concerning those conversations, you have been asked whether you told them that you knew these were marine joints. At that time did Mr. Webb or Mr. Burgoyne have in their hands the description of these goods?

A. That is right, that is what I bought them from, the description of the goods.

Q. And did Mr. Burgoyne tell you what you might do with these universal joints?

(Testimony of Herbert A. Jones.)

Mr. Harr: I think that has been gone into on direct examination.

Mr. Tongue: No. I have one point that wasn't gone into.

A. I think he told me that I might be able to sell them in the East where some shipyards were still operating.

Q. You recall that? A. Yes.

Q. Now, you were told by Mr. Bush that he had received this letter that counsel has called your attention to? A. That is right. [109]

Q. After Mr. Bush told you about the receipt of that letter did the Government make any attempt to get back any of these goods that had been delivered to you? A. No, I don't believe so.

Q. Did they ever tender to you any money and ask you to return those goods to them?

A. No.

Q. Now, when you——

A. In fact, the first time I knew they would tender me any money is when they filed this suit against me to rescind the contract. I didn't know until that time they would even give me the money back.

Q. Now, Mr. Jones, there has been a good deal about the value of these goods. You have testified that you didn't know what the scrap value was until you talked to Mr. Gibson; is that correct?

A. That is right.

Q. And that was when you learned the weight of the goods, is that right?

A. Yes—Well, Mr. Gibson didn't even know the

(Testimony of Herbert A. Jones.)

weight of them until he sent some man down to weigh them.

Q. I see. Did you know at that time that you would have to take apart these joints in order to sell them for scrap?

A. That is right. You have to separate the brass from the steel. [110]

Q. Now, you have been asked about a figure in your amended complaint in the State Court giving a value of some \$31,000 for these joints.

The Court: \$6,000.

Mr. Tongue: I beg your pardon?

The Court: He said \$6,000.

Mr. Tongue: I think it was \$6,000 for scrap and \$31,000 retail were the figures in that complaint.

Q. Was that the amended complaint that was filed in that case, do you know?

A. I believe it was. I can't be sure about it.

Q. In the original complaint was any figure given by you as to the value of those joints?

A. I don't believe so.

Q. Was it only on motion of the Government that you were required to give a value on those goods?

A. I believe that is right.

Q. And how did you determine the thirty-odd thousand dollar figure?

A. By what they were selling for in that catalog—I don't know whether they were selling, but they were advertised.

Q. That was the retail price in that catalog?

(Testimony of Herbert A. Jones.)

A. They had them advertised for. I don't know whether they were selling any or not.

Q. That catalog you received about a month or so after the sale, [111] is that right?

A. Well, I don't know whether it was a month, but probably along in January some time.

Mr. Tongue: That is all.

Mr. Harr: Just a moment. I have a question or two.

Recross-Examination

By Mr. Harr:

Q. You said you didn't know until we filed a suit that we would offer a refund?

A. That is right.

Q. Isn't it a fact that Mr. Mudge in writing to Mr. Bush said that if you made application for a refund it would be promptly handled? Is that right?

A. I think——

Q. December, 1946.

A. I think the letter said that a claim would be promptly handled.

Mr. Tongue: This letter speaks for itself.

A. If I would make some kind of claim—I don't remember the words in it.

Mr. Harr: Q. That it would be handled promptly. I think that is all.

Mr. Tongue: Just one question. [112]

Redirect Examination

By Mr. Tongue:

Q. They told you if you would make a claim you

(Testimony of Herbert A. Jones.)

could get your money back, is that what they told you in that letter? A. I believe.

Q. Did they ever come to you and make a tender of money? A. No.

Mr. Tongue: That is all.

(Witness excused.)

Mr. Tongue: There is some controversy as to the correctness of an exhibit. I think we can settle it after the trial, your Honor, without taking the time now. Mr. Anderson. [113]

RUSSELL D. ANDERSON

was thereupon produced as a witness in behalf of defendant and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Tongue:

Q. Mr. Anderson, did you go with Mr. Jones when he went to buy this residue in controversy here? A. I did.

Q. Were you with him when he was referred to Mr. Webb? A. Yes.

Q. Did Mr. Webb show him the written description and specifications of these items?

A. I don't remember whether he showed them to him or not. I am pretty sure he did.

Q. Was there any discussion of the gear joints at that time? A. None that I remember, no.

Q. Did you see any description of the various items at that time?

(Testimony of Russell D. Anderson.)

A. I looked through it, yes.

Q. I hand you this document marked Pre-Trial Exhibit 1 and ask you if that, or in substance, that description was what you saw at that time?

A. It was a sheet something like this.

Q. Yes. Just described the goods, is that what it did? A. Yes. [114]

Q. Did it show any prices or cost figures on it?

A. No prices whatsoever other than the fixed price of \$75.00.

Q. Were you with Mr. Jones when he was referred to Mr. Burgoyne? A. Yes.

Q. Do you recall what was said at that time?

A. Well, I don't know. We just went over to Mr. Burgoyne, and Mr. Burgoyne had a listing of it and thumbed through it and looked it over and said that he thought it was a good buy, probably get more out of it than he paid for it.

Q. Did you hear Mr. Burgoyne tell Mr. Jones anything about these gear joints or what might be done with them?

A. Not that I remember, no.

Q. Did he tell Mr. Jones what he might do with some of these items to dispose of them?

A. He said some of it you could sell, the automotive, here and there, hardware around, heavy machinery—He didn't specify any certain place, no.

Q. Did he tell Mr. Jones that this was a residue on which no bid had been received?

A. That is right, said it had been around for a

(Testimony of Russell D. Anderson.)

few days and he wanted to get rid of it, said he had to get rid of it.

Q. Did he set the price, or did Mr. Jones make an offer as to the price?

A. The price was set at \$75.00.

Q. By whom? [115]

A. I don't know who set it. He said it was higher and had been dropped down.

Q. Who said that? A. Mr. Burgoyne.

Q. Were you with Mr. Jones when he went out to the Maritime Commission yard to—or to the Oregon Shipyard—to pick up these gears?

A. Yes.

Mr. Harr: We admit, your Honor, that delivery was denied.

Mr. Tongue: Well, I want to develop something further here.

The Court: What?

Mr. Tongue: One of the claims that has been made by counsel is that Jones said that he knew this stuff cost the Government \$60,000, and we want to develop when he was first apprised of that fact, and I would like to corroborate Mr. Jones' testimony on that point.

Mr. Harr: The defendant would be the only one that knows that, and if he says it is at the Maritime Yard that he found they cost that we will admit that.

Mr. Tongue: No further questions.

Mr. Harr: No cross-examination.

(Witness excused.)

Mr. Tongue: Mr. Mudge.

C. T. MUDGE

Regional Director of War Assets Administration, was thereupon produced as a witness in behalf of defendant and, being first duly sworn, was examined and testified as follows:

Direct Examination

Mr. Tongue: Let the record show that this witness is examined as an adverse witness. He is Regional Director of War Assets Administration.

Q. You are Mr. C. T. Mudge?

A. Right.

Q. And you are Regional Director of the War Assets Administration?

A. The Portland Region.

Q. When did you first learn of this sale to Mr. Jones? A. Mr. Tongue, I don't know.

Mr. Tongue: May I approach the witness?

The Court: Yes.

Mr. Tongue: Q. I hand you this document marked Pre-Trial Exhibit 18, a letter signed by you to Mr. Bush.

A. Yes, I recall receiving a letter from Mr. Bush, but whether I knew about the case before or not, I can't answer.

Q. Is this your signature? A. Yes. [117]

Q. And you say you delayed answer because of the fact that the writer wanted complete information on the Jones matter? A. Correct.

Q. So that when you wrote this letter you did have complete information on the Jones matter, is that right? A. Correct.

(Testimony of C. T. Mudge.)

Q. What was the original reason for refusing delivery of these joints to Mr. Jones?

A. I think, if I recall, the original reason for refusing delivery was the receipt in our office of a TWX from Maritime stating that they were being withdrawn.

Q. Did they give any reason for withdrawing the goods?

A. I don't recall that. I don't remember seeing the TWX. Somebody must have told me about it.

Q. Did they ever before withdraw goods after sales documents had been issued?

A. That I can't answer.

Q. Had delivery ever before been refused for any reason after sales documents had been issued?

A. That I can't answer either, except by hearsay.

Q. Now, originally was there any question as to the legal authority of the War Assets Administration to make this sale?

A. Was there any legal——

Q. Any question as to the authority to make this sale?

A. A question as to the authority of War Assets to make the [118] sale of properly declared war surplus assets?

Q. What I am asking is this, Mr. Mudge: Originally and at the time you wrote this letter was there any question in your mind as to whether this sale exceeded the authority of the War Assets Administration and its representatives?

A. Well, I'd like to answer that, but I didn't

(Testimony of C. T. Mudge.)

see the sales documents on the case and I didn't know about it except by hearsay, comment about the office.

Q. To refresh your recollection, Mr. Mudge, I will call your attention to the deposition taken in the—I don't have the date on which it was taken, but you will recall the incident, I think,—

A. Yes.

Q. —in which you were asked this question:

“Question: Does that authority include the power to approve or disapprove such sales?”

“Answer: Within the specified policy limits, yes.

“Question: Can you briefly state what those limits are, Mr. Mudge?”

“Answer: I can't, no, not without reference to the delegations of authority.

“Question: Are those limits involved in this case, Mr. Mudge?”

“Answer: No, no; this is within the limits of [119] the Regional Office's authority, yes.”

Do you recall that now?

A. Yes, that is true.

Q. And do you also recall that at the time of that deposition, whether you were asked this question: “Is there any question as to the authority of the person who fixed the price of these goods?”

“Answer: No, I think not.”

A. To fix a price for goods?

Q. To fix the price for these goods?

(Testimony of C. T. Mudge.)

A. Well, I must have misunderstood the question, then.

Q. Now, originally, was there any question as to the complete good faith of Mr. Jones in this case?

A. I don't—Not to my personal knowledge.

Q. This deposition was taken after you wrote this letter, was it not? A. Yes.

Q. In which you purported to have complete information, and I call your attention to the fact that in this deposition you were asked this question: "Is there any question in your mind as to the good faith of Mr. Jones in this matter?"

"Answer: No, not that I know of. He was looking for a bargain, perhaps."

A. That would be true.

Q. Now, originally was there any part of this sale questioned [120] other than the gear joints themselves?

A. Not so far as I was concerned.

Q. What was that?

A. Not so far as I was concerned. I didn't know anything about the programs.

Q. Do you know what these goods are worth.

A. Do I? No.

Q. In that connection, do you also recall in this deposition that you were asked——

The Court: He doesn't know. What are you going to show?

Mr. Tongue: Very well. The deposition is in evidence.

(Testimony of C. T. Mudge.)

Q. Now, were the goods ever actually withdrawn by the Maritime Commission?

A. I don't think so. Whether they followed up with a withdrawal or not—That would have gone through the Acquisition Department.

Q. So far as you know, they were left with War Assets Administration? A. So far as I know.

Q. Mr. Mudge, were you served with a subpoena to produce certain records? A. I was, yes.

Q. Have you produced those?

A. I can't produce them. They have been sent to Washington by the GAO.

Q. Do you have any documents in your files that show the cost [121] price and the sales price for the transactions called for in those documents?

A. Are you talking about the first subpoena or——

Q. Both of them.

A. The WAA2s we don't have, but the WAA1s are in the files but are sealed for shipment to San Francisco.

Q. Would WAA1s show the cost price?

A. That I don't know.

Q. In any event, you have gone through your files and you can't produce this information?

A. I have asked somebody to do it, Yes.

Q. Yes, I can understand that.

Mr. Tongue: I think that is all.

Cross-Examination

By Mr. Harr:

Q. Mr. Mudge, in response to a question by coun-

(Testimony of C. T. Mudge.)

sel pertaining to that deposition that was taken, I think you had an explanation to make with reference to authority, the agents having authority to fix a price, and you answered, "I must have misunderstood the question." Do you have an explanation of that?

A. Well, we have a pricing section that normally has authority to fix prices on almost anything that is priceable.

Q. And is that what you thought he had reference to?

A. That is what I thought he meant, the pricing division and the operation of that division. [122]

Q. At that time, the time of this sale in October, 1946, I will ask you whether anyone besides yourself had authority to make a negotiated sale?

A. No.

Q. Then, of the entire organization there, this particular equipment as it was listed, you were the only one that had authority to make that sale?

A. Only the final authority. At that time we were discouraged in the making of negotiated sales and the negotiated sale procedure was hemmed in with countless regulations. It had to pass through the Regional Review Board and Board of Allocation Awards, and so forth, and finally comes up to the Regional Director for final approval.

Mr. Harr: I think that is all.

Mr. Tongue: No further questions.

(Witness excused.)

Mr. Tongue: Now, the only other witness I have, your Honor, is one who would testify as a dealer in industrial supplies and equipment and who has himself purchased similar equipment, and we are prepared to offer through him testimony of the custom and practice. If your Honor doesn't want to admit that, and I gather from what you said you don't think it is material——

The Court: Well——

Mr. Tongue: May I make an offer of proof at this time? [123]

The Court: Yes.

Mr. Tongue: We offer witness John K. Paulson, who is a dealer in industrial supplies and equipment, and represents that if allowed he would testify that the approximate percentage of the sales price to him as compared to the original cost price to the Government of the supplies and equipment that he has purchased from the War Assets Administration has ranged from one-half of one per cent to 100 per cent, and that the range will depend on whether the goods that are sold have some standard use or whether they just have a special use and couldn't be resold except for scrap, and he would also testify, if allowed, that it was the practice of the War Assets Administration when goods are left as a residue, when they have been offered for bid and no bids have been received, to offer those goods for sale at the highest possible price in order to get rid of them at the earliest possible date; and he would also testify that he has never heard of any attempt to cancel any sale after the sales documents

have been issued, whether on the basis of mistake, lack of authority, or otherwise.

The Court: You could show the first two parts of it, but not that last.

Mr. Tongue: Would counsel stipulate he would so testify if offered as a witness?

Mr. Harr: No, I think we should have the testimony, because we will have some to refute. [124]

Mr. Tongue: Very well. Call Mr. Paulson.

JOHN K. PAULSON

was thereupon produced as a witness in behalf of defendant and, having been first duly sworn, was examined and testified as follows:

Mr. Tongue: In that connection, your Honor, and in considering the testimony of this witness, I would like to call attention to the fact that we attempted to subpoena from Mr. Mudge—and I can understand his difficulty—the records of the sales to the big four junk dealers in the Portland area during this same period, because we felt that that would show sales on a similarly small fraction of original cost.

Mr. Harr: Your Honor, with reference to those subpoenaed records, that subpoena, I think, was issued Friday and delivered Saturday, and we had no opportunity, and it would require a number of days to, or maybe weeks, to get that information.

Mr. Tongue: I can understand the situation, although my information is that there are not a great many sales to each of those dealers during that period of time, but I can understand the problem.

(Testimony of John K. Paulson.)

Direct Examination

By Mr. Tongue:

Q. Mr. Paulson, what is your occupation?

A. I am a dealer in industrial supplies and equipment.

Q. Have you made any purchases of supplies and equipment from [125] the War Assets Administration?

A. Yes, for about two years.

Q. Approximately how many purchases have you made over that period of time? Do you have any idea?

A. Oh, probably two hundred.

Q. Now, of those sales, purchases by you from the War Assets Administration, what would be the range, comparing the original cost to the Government with the price that you were required to pay to the War Assets Administration?

Mr. Harr: I am going to object to this testimony, your Honor. It doesn't tend to prove or disprove any of the issues in this case, is immaterial, and, another thing, that if it is proved that there were other sales that were ultra vires wouldn't be a defense in this case, or the fact that another sale was illegal that this sale should be declared legal. It is our duty to see that all sales are proper.

The Court: He is just showing that it isn't scandalous to buy something for one-thirtieth of its value.

Mr. Tongue: It goes to the question of good faith, also.

The Court: I know that: It bears on the legality or ultra vires.

(Testimony of John K. Paulson.)

Mr. Tongue: You may answer.

A. It varies, oh, I'd say from one-half of one per cent to 150 per cent.

Q. What will determine the range in those figures in percentages? [126]

A. Anyone buying surplus looks first not to the cost, the acquisition cost, but to the salability of the article. There were so many things which were made for some specific purpose during the war, for a shipyard or for an Army vehicle, for which there would be no sale now. If you are buying something like that, well, you can't begin to pay the acquisition cost, or even a fraction of it. You have to buy so that you can come out on it in scrap, that is all.

Q. Did you ever purchase goods for less than the scrap recovery? A. I sure have.

Q. Do you know what the practice of the War Assets Administration is in disposing of residues remaining after offerings for bid?

A. Yes, I have been offered residues several times. In fact, I have purchased some. When a bid is rejected—the procedure now is to contact three dealers in that who normally buy that type of equipment, including the higher bidder.

Q. Was that the procedure at that time?

A. No, I don't believe so, although it could have been; however, I was offered surplus material at that time just on a fixed-price basis. For instance, one group of dollies, truck dollies, which I had bid on and was high bidder. My bid was rejected because it wasn't high enough. Then I offered another

(Testimony of John K. Paulson.)

price for the dollies and the salesman took it up with someone else in authority—I don't know who—but they didn't consider—— [127]

The Court: Don't go into specific instances, Mr. Tongue.

Mr. Tongue: I am very nearly through, your Honor, and this is the last witness.

Q. Mr. Paulson, was it the practice of War Assets Administration to hold goods for the last possible dollar? A. No.

Q. What was their policy?

A. The policy, as far as I was able to see, was to sell the surplus property. They had so much of it that they couldn't realize the last possible dollar, they had too much to move, although they did try to get as much as they could in a short length of time.

Q. Did you ever hear of an attempt to cancel any sale or withdraw goods after the sale had been completed and sales documents issued?

A. No, sir.

The Court: That is not in this case.

Cross-Examination

By Mr. Harr:

Q. You have been rejected on a great many bids that you have put in, have you not?

A. No, I think that in all three bids were rejected.

Q. And you say that you got goods at a fraction of the cost. How do you know what it cost?

A. Because the salesman in the various regional

(Testimony of John K. Paulson.)

offices will [128] show me the form and tell me what the acquisition cost was. On various offerings the acquisition cost will be stamped right on it.

Q. Now, this matter of negotiating sales, that is only in the last six months?

A. That is possible. That is what I said in my answer to counsel's question.

Q. Now, as to whether or not they would get a fraction of the cost, if you went down there and they had Caterpillar tractors, would you get them at cost today?

A. At cost—At less than cost.

Q. Today? A. Yes, that is right.

Q. They bring three or four times their cost price, don't they? A. That is right.

Q. So they wouldn't get it at cost?

A. They sold one today at Renton, Washington, a D-8 Cat listing around \$15,000—they sold it for \$3,760.

Q. Was that new?

A. No, but it was in very good condition. I would gladly have paid \$12,000 for it.

Q. You didn't bid on it?

A. I did, but I wasn't fortunate in the drawing. It was a fixed-price sale and you put in your offer to purchase and then [129] they draw a number out of the hat and the lucky winner got it.

Q. You think that the per cent of cost price in the overall picture is very low, is that the picture you are trying to portray; isn't it?

(Testimony of John K. Paulson.)

A. No, no, I wouldn't say that. We have some paint in our warehouse right today, and we paid a hundred and ten and a hundred and twenty per cent of acquisition cost.

Q. On that?

A. Yes. But we also have some material there which we only paid, paid less than one per cent of acquisition cost, and we can't sell it for anything.

Q. As a matter of fact, would you say that they have obtained over the period of their existence down there 29 per cent of all sales, 29 per cent of cost price?

A. I wouldn't have the slightest idea. I only know about the purchases which I have made.

Mr. Harr: I think that is all.

Mr. Tongue: No questions. You came in response to subpoena, did you not, Mr. Paulson?

A. Yes.

(Witness excused.)

Mr. Harr: We will recall Mr. Mudge.

Mr. Tongue: I have no further witnesses. I want to call attention to this deposition of Mr. Gibson who is not available. [130] It goes in evidence, as I understand.

Mr. Harr: No, I would object to it going into evidence. That is a deposition, your Honor, taken in another case in another court, and I would object to it. I don't know what counsel has in mind.

Mr. Tongue: You haven't reserved any objection to it, I don't think, Mr. Harr.

Mr. Harr: Well, I am going to object to it.

Mr. Tongue: Here is a situation of a witness not available, now in Baltimore, Maryland. We could have taken his deposition in this case back there or anywhere else. We happened to take it in connection with a proceeding in the State Court, and those proceedings were substantially, although not totally, between the same interests. Mr. Mudge was involved, and Mr. Gibson was the custodian of the goods, and we submit there is sufficient identity of interests to make these depositions admissible in this case.

Mr. Harr: Your Honor, I would object to it for another reason. Normally when you take an adverse party deposition we wouldn't cross-examine our own witness in that case, and there is no cross-examination here, and certainly we would want to meet the things that were brought out, so I would want to interpose another objection.

Mr. Tongue: You had the opportunity to examine him at that time, and your interests in cross-examination at that time were [131] identical in cross-examining him at this time if produced as a witness, and the cases, as I recall them, as to whether depositions or testimony in other cases is admissible in the instant case turn on the question whether the interest in cross-examination would be substantially the same in the other case as in the present case.

The Court: You can fight that out later. I will probably want to hear argument later. [132]

C. T. MUDGE

Regional Director of War Assets Administration, was thereupon produced as a rebuttal witness in behalf of plaintiff and, having been previously duly sworn, was examined and testified as follows:

Direct Examination on Rebuttal

By Mr. Harr:

Q. Mr. Mudge, you have heard the testimony of the preceding witness about the percentage of recovery of property sold under War Assets. What is your explanation of that?

A. Well, I have some figures that might be interesting. Cash recovery up to this time amounts to 29.9 per cent of the acquisition cost.

Q. That is the operation of War Assets by your department, or is that the over-all picture?

A. Of this Regional Office here.

Q. Of this Regional Office?

A. Yes, and the highest month was 69.9, and the lowest month was 11.8, and we averaged 29.9.

Mr. Harr: I think that is all.

Cross-Examination on Rebuttal

By Mr. Tongue:

Q. Mr. Mudge, that purports to be simply an average, does it not?

A. Yes, that is the monthly average.

Q. You don't intend to have the impression conveyed that there [133] aren't many sales both far in excess of that average, and also many sales far below that average?

A. Correct, correct.

Q. And you don't intend to convey the impression that even though a sale is far below that average it would be an invalid sale?

(Testimony of C. T. Mudge.)

A. Not necessarily.

Mr. Tongue: That is all.

Mr. Harr: That is all. The Government rests, your Honor.

(Witness excused.)

Mr. Tongue: Do you desire to hear argument or have this case submitted on written memoranda, your Honor? Either method would be agreeable as far as we are concerned.

The Court: What do you want to do, Mr. Harr?

Mr. Harr: It is immaterial with us, your Honor.

The Court: Mr. Tongue, you are for the defense, aren't you?

Mr. Tongue: Yes.

The Court: Do you want to file a memorandum?

Mr. Tongue: I would suggest that it be submitted on memoranda, your Honor. There are principally law points involved here. The Government has suggested some of the, and I suggest they be given an opportunity to file a memorandum.

The Court: He says he doesn't want to file one, so you file opening paper and he will answer you. [134]

Mr. Tongue: Can we then rebut his answer?

The Court: Yes, you can.

Mr. Tongue: Very well. How many days would your Honor——

The Court: Oh, take your time.

Mr. Tongue: Two weeks?

The Court: Do you want longer than that, three weeks?

Mr. Tongue: Three weeks, if you please.

Mr. Harr: That is satisfactory, your Honor.

The Court: Two for you.

Mr. Harr: My associate will prepare that, and he will be out of town for about two weeks.

Mr. Tongue: Your Honor, before the record closes we would like to read into the record our objections to——

The Court: You may do that by brief.

Mr. Tongue: Very well.

The Court: Now, I want to suggest one or two things. Is the bill of sale, or whatever he got, is that here among the exhibits?

Mr. Tongue: Yes, it is, your Honor.

The Court: Now, where are the gears or whatever they are?

Mr. Tongue: They are in that box.

The Court: All of them?

Mr. Tongue: One of each type.

The Court: Where are the rest of them?

Mr. Tongue: I don't know. Ask the Government. [135]

The Court: No, I didn't want to do that.

Mr. Harr: The War Assets Administration have them in their custody.

The Court: You are in equity, Mr. Harr, and suppose the case goes against you, suppose you are denied relief. How is the other man going to get what he is entitled to?

Mr. Tongue: May I say this for the information of the Court. After the gears were moved to Washington we secured a restraining order on stipulation with counsel for the Federal——

The Court: State of Washington or City of Washington?

Mr. Tongue: State of Washington.

The Court: Where in the State of Washington?

Mr. Tongue: Vancouver. That is the last information I have concerning the location of the goods.

The Court: Finish your statement.

Mr. Tongue: As I say, we secured by stipulation a temporary restraining order issued out of the District Court for the Western District of Washington in Tacoma, restraining further movement of those gears, so we presume they are still there, but we don't know.

The Court: Here is an equity case brought by Mr. Harr where he wants rescission of this paper which you have. If you had the gears, had delivery of the gears, he would want the gears within the jurisdiction of the Court and he would want a decree directing you to return them. You never got them, so he wants— [136] although he hasn't specifically pleaded—he wants this document delivered up. Now, then, suppose the case goes against him.

Mr. Tongue: We would have title to the gears and we would suppose we would be able to obtain their possession since they are now under restraining order of the Court in Tacoma.

The Court: Well——

Mr. Tongue: On that same point——

The Court: Let me finish, now. There was talk here that the gears had been withdrawn from disposal, that the Maritime Commission had withdrawn them as disposable assets.

Mr. Tongue: Your Honor, among the exhibits in this case although we didn't make specific reference to it, is a shipping notice to the Maritime Commission directing it to turn over these goods to the War Assets Administration, and I think that is evidence that the War Assets still have the assets in their control. Mr. Mudge testified also he didn't think the Maritime Commission had actually withdrawn the goods, so I think the record shows the goods are still under the control of the War Assets Administration.

The Court: What relief do you pray for?

Mr. Tongue: Well, we have, we ask that the sale be held valid and binding and plaintiff be declared owner of all the items involved in that sale and the complaints be dismissed.

The Court: You should ask for more than that, an order asking that they be turned over. [137]

Mr. Tongue: We had that in mind. There is some question—We relied on the good faith of the Government giving us the joints if we are declared the owner.

The Court: You are very trusting.

Mr. Tongue: Perhaps very much so. Yes, I would like to amend our prayer, if the Court will allow, asking for an order directing the Government to turn over these joints if it be held that this is a valid sale.

The Court: That means they would have to be brought within the jurisdiction of the Court so the order will be effective.

Mr. Tongue: Well, that is the problem, as you can see.

The Court: It wouldn't be any problem. I would just require that be done in addition before I rule in the case. The Government is here invoking equity. I don't have to exercise equity powers unless it is stated to my satisfaction, and that is a thing to be thought about.

Mr. Tongue: Well, that is in accord with our position as stated in the State Court, that under the law of Oregon the plaintiff in a replevin action doesn't have to rely on the choice of the defendant whether to give the goods or the value, but he is entitled to the goods themselves and only has to take the value if for some reason it is impossible to return the goods or if they have been destroyed.

The Court: Well, what I am talking about, my point is that I don't want to be a party to a sham battle. If this goes [138] against the plaintiff, I want to know that the relief would be equally effective against the plaintiff as it would be against the defendant.

Mr. Tongue: May we ask for a temporary order directing the Government——

The Court: No, not now. I guess that is all I have in mind. Anything else you gentlemen have?

Mr. Tongue: I think that is all.

The Court: You are going to take three weeks each?

Mr. Tongue: Yes.

The Court: Certainly as far as within your power, Mr. Harr, they won't be moved any further?

Mr. Harr: We have stipulated, your Honor, that there would be no removal.

The Court: You know they are in Vancouver?

Mr. Harr: I know from what I have been told. I am satisfied they are there.

The Court: You have been told that and which you have reason to believe.

Mr. Harr: That is right.

(Whereupon the following proceedings were had in the absence of the Court:)

Mr. Harr: In addition to the objections which are already noted in the record, plaintiff further objects to the admission [139] in evidence of Defendant's Pre-Trial Exhibits 8, 10, 12, 16, 17, 19 and 20 upon the grounds——

Mr. Tongue: 19 and 20 were withdrawn, and 16——

Mr. Harr: 19 and 20 are out?—upon the ground and for the reason that they are irrelevant, incompetent and immaterial and serve no useful purpose in this case to prove or disprove any of the issues involved herein.

Mr. Tongue: For the record defendant notes his objections to Plaintiff's Exhibit 2 upon the ground that the same is irrelevant and immaterial and incompetent, and upon the further ground that that exhibit is not the best evidence and that it represents a carbon copy upon which it was admitted that alterations and additions had been made after receipt by the War Assets Administration.

Defendant desires to note the same objection to Plaintiff's Exhibits 3 and 4.

Defendant desires to note objections to Plaintiff's Exhibit No. 5 on the ground that the same is irrelevant, immaterial and incompetent, and the further ground that the same is not the best evidence and that it——

Mr. Harr: Which exhibit?

Mr. Tongue: 5. ——in that it is a mimeographed copy and there is no identification or authentication of said exhibit.

Defendant further desires to note for the record his motion to strike from the record all evidence offered by the [140] plaintiff tending to show lack of authority by the representatives of the War Assets Administration to make the sale involved in this case on the ground that before lack of authority can be shown it must first be shown that the purchaser was not a bona fide purchaser and that no such showing has been made by the plaintiff in this case.

Defendant finally desires to move to strike all evidence that the Government made a mistake in the sale of these goods upon the same ground, namely that such evidence is barred by the War Surplus Commodities Act in the absence of proof that the purchaser was not a bona fide purchaser.

Defendant also moves to strike all evidence by the Government relating to its contentions that the defendant was not in good faith or that the sale should be rescinded in its entirety upon the ground that these reasons were not among the reasons

originally stated by the Government for the cancellation of the sale in this case, and that the Government waived these grounds by specifying other and different grounds for canceling this sale as stated in Defendant's Exhibit 18, and as stated in the original complaint filed in this case.

I think that is all the objections, but we want a stipulation as to corrections in this pre-trial order. I don't know if that needs to be done on the ground, because we want to reserve objection to 2 and 3 and add this as Exhibit 22.

Mr. Harr: I think it might be stipulated that the pre-trial [141] order, page 11, may be amended by interlineation, inserting the word "defendant's"—on page 11 of the pre-trial order—between lines 9 and 10.

Mr. Tongue: Well, that is your 11, which is the list of the exhibits. It may be a different page. Yes, that may be stipulated. May it also be stipulated that the pre-trial order may be amended to insert as Exhibit 2 the pleadings in the instant case, and also that defendant's objections as noted in the pre-trial order may be amended to include Exhibits 2 and 3.

Mr. Harr: And I would like to say for the record——

Mr. Tongue: Is that stipulated?

Mr. Harr: Yes. I would like to state for the record that those exhibits which were objected to by defendant's counsel as not being the best evidence, being photostatic duplicate copies, that if the Court should find those exhibits as introduced

are objectionable for the reasons stated by counsel that we be afforded the privilege of obtaining the originals thereof and substitute them for the copies as presented in court.

Mr. Tongue: We have no objection. We may also reserve the right to ask the Government to produce Exhibits 21 and 22—not 21 and 22—It is 8, 21 and 22.

Mr. Harr: I will object to the reservation of any rights to produce exhibits other than——

Mr. Tongue: Those are 8 and 21, those that Mr. Mudge was——

Mr. Harr: I will object to any reservation of any right to [142] produce any other exhibits than those available at the trial, it being my contention that the case has now been submitted finally.

Mr. Tongue: And you decline to if we request it, to ask the Government to produce these documents called for in Exhibits 8 and 21, is that right?

Mr. Harr: Yes, because our case is rested, submitted.

Mr. Tongue: Well, we would like to have it understood that in resting the case we rested subject to that reservation.

(Whereupon, at 5:50 o'clock p.m., on the 22nd day of December, 1947, the trial of the above-entitled cause was concluded.) [143]

REPORTERS' CERTIFICATE

We, Ira G. Holcomb and Glenn G. Foster, Court Reporters, do hereby certify that we jointly re-

ported in shorthand proceeding had in the above-entitled matter in the above-entitled Court on Monday, the 22nd day of December, A. D. 1947, and that the numbered pages set opposite our names below were by us respectively transcribed from that portion of the testimony and proceedings reported by each of us in shorthand: Ira G. Holcomb, pages 1 to 55, inclusive; Glenn G. Foster, pages 56 to 143, inclusive, and we hereby further certify that the said pages so set out opposite our respective names constitutes a full, true and accurate transcript of that portion of the testimony and proceedings so reported in shorthand by each of us as above certified, including objections and motions of counsel, rulings of the Court, exceptions taken and other oral proceedings had in said cause.

Dated this 6th day of April, A. D. 1947.

/s/ IRA G. HOLCOMB,

/s/ GLENN G. FOSTER.

[Endorsed]: Filed April 19, 1948.

DEFENDANT'S EXHIBIT No. 14

In the District Court of the United States
for the District of Oregon

Civil No. 3916

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HERBERT A. JONES, JR.,

Defendant.

DEPOSITION OF WILLIAM J. BURGOYNE

Taken as an adverse witness on behalf of defendant.

Be It Remembered that, pursuant to the oral stipulation hereinafter set out, the deposition of William J. Burgoyne was taken on behalf of defendant before Ira G. Holcomb, a Notary Public for Oregon, residing in Portland, on the 21st day of October, A. D. 1947, beginning at 2:00 o'clock p.m., in the United States Courthouse, in the City of Portland, County of Multnomah, State of Oregon.

Appearances: Mr. Victor E. Harr, Assistant United States Attorney, appearing on behalf of the plaintiff. Mr. Thomas H. Tongue (Hicks, Davis & Tongue), of Attorneys for Defendant.

It is stipulated and agreed by and between the attorneys for the respective parties that the deposition of William J. Burgoyne may be taken on behalf of the defendant, as an adverse witness, at

Defendant's Exhibit No. 14—(Continued)
the offices of the United States Attorney, United States Courthouse, in the City of Portland, County of Multnomah, State of Oregon, on Tuesday, the 21st day of October, A. D. 1947, beginning at 2:00 o'clock p.m., before Ira G. Holcomb, a Notary Public for Oregon.

(It is further stipulated that the deposition, when transcribed, may be used on the trial of said cause as by law provided; that all questions as to the notice of the time and place of taking the same are waived; and that all objections as to the form of the questions are waived unless objected to at the time the questions are asked; and that all objections as to materiality, relevancy and competency of the testimony are reserved to the parties until the time of trial.)

WILLIAM J. BURGOYNE

was thereupon produced as an adverse witness on behalf of defendant and, being first duly sworn to testify the truth, the whole truth and nothing but the truth, was examined and testified as follows:

Direct Examination

By Mr. Tongue:

Q. Will you state your full name for the record?

A. William J. Burgoyne.

Q. How old are you, Mr. Burgoyne?

A. Forty-eight.

Defendant's Exhibit No. 14—(Continued)

Q. How long have you been employed by the War Assets Administration?

A. Since July 9, 1946.

Q. In what capacity?

A. They have different headings over there. I went in as Business Analyst at first, and then I was made Chief of the Automotive Division.

Q. Are you still in that capacity?

A. No, I am Chief of the Sales Planning and Analyzing Division, now.

Q. In what capacity were you employed at the time of the sale in question to Mr. Jones?

A. Acting Chief of the Automotive Division.

Q. What had been your previous experience, Mr. Burgoyne?

A. Well, I had ten years with the Ford Motor Company, the branch here in Portland.

Q. Did that involve the assembly of cars?

A. Involved the assembly of cars and sales and sales promotion work and all of that.

Q. Had you had any other automotive experience?

A. Well, I worked two years for E. C. Simmons of Eugene, Ford dealer.

Q. In what capacity were you employed there?

A. Started in as a tractor salesman and I ended up as shop superintendent.

Q. Engaged in the repair of motor cars?

A. That is right.

Q. Mr. Burgoyne, you refer to the Automotive

Defendant's Exhibit No. 14—(Continued)

Division. I notice from the exhibit attached to the Government's complaint in this case, designated as a copy of Special Offering No. C-286, that it refers to the Automotive and Machinery Sales Division. Is that the division to which you refer?

A. Yes, there was machinery involved in that. We had some construction machinery and that went with the automotive, automotive and machinery.

Q. There was just one division, Automotive and Machinery, is that right? A. That is correct.

Q. And that is the division of which you were the Acting Chief? A. I was at the time, yes.

Q. Now, referring again to this Special Offering No. C-286, were these special offerings prepared by your division?

A. Yes, by the division I was in.

Q. At that time did you have charge of the preparation of this special offering?

A. No. I had men that worked with me in that division and they made the offerings up.

Q. Were they subject to your approval?

A. Yes, my approval, and we had special forms to list all this equipment on.

Q. To whom were these special offerings sent, if you know?

A. When a special offering of the Automotive Division was sent down, primarily it would go to the Automotive and Construction Machinery mailing list, but I checked up—of course, before that, they would send these down and the Advertising

Defendant's Exhibit No. 14—(Continued)

Department would look them over and they would send them to other mailing lists, and I checked and I find that this particular one, 286, was sent to Rough Hardware and Light Hardware, and Construction Machinery, and Farm Implements, because there was pumps in that, like Mitchell, Lewis & Staver, who handle farm machinery and pumps: also sent to Metals, which would be the scrap dealers in town. They buy up the metals and steel and pipe and all that stuff. That is about all that I recall that this particular one went to. It went to several outside of Automotive, but that was arbitrarily set up by the Advertising Division, because it was a mixed program.

Q. Mr. Burgoyne, I wonder if you would be good enough to take this Special Offering No. C-286 and go through the various items and indicate which of the items consist of automotive parts and which of them consist of other types of machinery and parts. A. No. 1—

Q. I think you should designate them by numbers.

A. No. 1 would be Automotive. That is part of a truck.

Q. Yes. A. And No. 2, that would—

Q. That is "Cock, plug?"

A. "Cock, plug," yes. Well, that could be used by construction machinery people or hardware people.

Q. Is that an automotive part?

Defendant's Exhibit No. 14—(Continued)

A. From the description, I could not tell whether it is an automotive part or not, but it was brought to me and I programmed in the Automotive Division.

Q. Engine assembly?

A. Yes, that would be automotive, those two items there.

Q. That is, for each of these items listed as No. 3? A. Yes.

Q. Now, Item No. 4.

A. Journal jacks. Well, these ball-bearing jacks could be used in construction and automotive, also. That is one of these.

Q. Was it made as an automotive jack?

A. No, it was not made—they sent it to my division to be programmed.

Q. What was it made for?

A. It was used in the shipyards for jacking, as I recall. That is what I supposed it would be used for, the use it would be made—a lot of these maritime tools we did not know much about. Anyway, in fact, I did not know anything about that.

Q. Then, the next item, jack, journal, No. 5.

A. That would be the same as No. 4. That is the same type of equipment.

Q. No. 7, jacks, hydraulic?

A. Yes, that would be the same, and also No. 8. That is ratchet jacks. That could be used for construction, any type of construction work.

Defendant's Exhibit No. 14—(Continued)

Q. Where were these jacks located at the time, do you know?

A. They were located in one of these shipyards. It gives the location here of all of these jacks. Located at Columbia Metals Corporation, Salem Oregon.

Q. Where does it show the location?

A. Right down here. It starts right here, shows the location.

Q. I see. Do these locations refer to everything preceding?

A. Yes, that is right; just to Item No. 14. That is all jacks. These here were located at Columbia Metals.

Q. Now, Item No. 9, jacks, push-pull.

A. Yes, jacks, push-pull. They would be similar to these other jacks and could be used for construction work. I think they could be used for automotive, too—push-pull jacks.

Q. But a push-pull jack was probably used in connection with the shipbuilding program, wasn't it?

A. Yes, they used that equipment. It was adaptable to other lines.

Q. Item No. 10, push-pull jacks.

A. Yes, that would be the same as No. 9.

Q. And No. 11? Journal jacks?

A. Journal jacks. Well, yes, journal jacks, ball bearing. That is the same as the first few jacks. They have them mixed up.

Defendant's Exhibit No. 14—(Continued)

Q. Item No. 12, jacks, journal, low height.

A. Jacks, journal, low height, ball bearing, screw type. They would be used in construction work, even in house moving or things like that.

Q. Wouldn't they be larger than were ordinarily used in automotive?

A. Well, they would be, yes, but they could be used as construction equipment, also.

Q. Journal jack, low type, 25-ton.

A. That would be the same proposition.

Q. A 25-ton jack? A. Yes.

Q. Item 17, jacks, screw, low height. That would be the same thing, would it? A. Yes, sir.

Q. I mean to refer to Item 14, 17 jacks.

A. Yes.

Q. Item No. 15, jacks, screw?

A. The same jacks. They could be used in construction equipment.

Q. 25-ton jacks?

A. Yes, 25-ton jacks. It is not a very big jack, a 25-ton screw-type jack is not, is not a very big jack.

Q. What was it made for, do you know?

A. Well, it is made for several different things. I understood they were used in these different plants. I don't know where these came from. This says, "Pendleton Army Air Base." No, wait a minute.

Q. In connection with the Air Corps program, then?

Defendant's Exhibit No. 14—(Continued)

A. Well, I will have to go back. They changed these locations on here. Now, they put the location down at the bottom of the list, but at this time they put it at the top of the list, the location where this equipment was.

Q. You refer now to Item No. 1?

A. Yes, that is right. It is at the top. Now they put it at the bottom of the list.

Q. You mean, then, the jacks were located at Kaiser Company, Swan Island?

A. Yes, that is right, Kaiser Company, Swan Island.

Q. That is where all these jacks were?

A. I was mistaken in that, because they changed the way they did it.

Q. Items 15, 16 and 17 were at Columbia Metals? A. Columbia Metals, Salem, Oregon.

Q. Then we come to Item No. 18. A. Yes.

Q. Airplane tripod, hydraulic, jack?

A. Yes, that is right. They threw the airplane equipment in with the automotive. We did not have any airplane division for component parts of airplanes, so they threw it in with automotive and I advertised it as such.

Q. Items 19 and 20 and 22—21 and 22—are similar airplane-type jacks?

A. Yes, used at Pendleton Army Air Base for airplane work.

Q. All located at the Pendleton Army Air Base?

A. Yes.

Defendant's Exhibit No. 14—(Continued)

Q. Then we come to Item 23, kingpins for trailer hitch.

A. That would be automotive. Those were at Gunderson Brothers, Portland, Oregon.

Q. That would be automotive equipment?

A. Yes, that would be.

Q. Item No. 24, Norgren lubricator. What is that?

A. Well, I don't know what this is. At the time I figured it was one of these lubricators for pressure lubrication, and I advertised it. I put it in this automotive program. That was my idea of it.

Q. Item 25, spare parts, location Kaiser Company, Inc., Vancouver. What would that be? Would that be at the shipyard?

A. That would be Kaiser Company shipyard, yes.

Q. Go ahead.

A. Like I say, I was unfamiliar with the marine situation, the marine stuff, and I couldn't tell about all this type of material that was given to me in my division to program.

Q. You knew that that was marine material, did you not? A. Well, I couldn't say.

Q. At least, you knew it was at the Kaiser shipyard in Vancouver?

A. That is right, Kaiser shipyard.

Q. Item 26, miter gear, located at Oregon Shipbuilding. That would be the same thing, would it?

A. Well, yes. Miter gear—that was located at

Defendant's Exhibit No. 14—(Continued)
the Oregon Shipbuilding. I was unfamiliar with the type of equipment that they used.

Q. You did not think it was automotive equipment, though, did you?

A. I couldn't place it. This—What do I want to say? Might have placed it in several categories, according to this description here.

Q. In your experience, your previous experience with the Ford Motor Company and otherwise in the automobile field, did you ever encounter a miter gear?

A. No—Well, in manufacturing, yes. I was back to the Ford Motor Company in Detroit several times and I went through and I heard engineers back there talking about miter gears. Miter gears of several different types were used.

Q. Did you ever see one used on a motor car?

A. Never have. I never have seen one used any place.

Q. Items 27, 28, 29 and 30, are these universal gear joints that are in controversy? A. Yes.

Q. Those, as indicated, were at the Oregon Shipbuilding Corporation? A. Yes.

Q. And you knew they were at the Oregon Shipbuilding Corporation at that time, did you not, Mr. Burgoyne?

A. The location was at the Oregon Shipbuilding. That is on the declaration.

Q. What is this Item No. 31, chess wagon?

A. That was a piece of equipment that could

Defendant's Exhibit No. 14—(Continued)

be used by farmers, or at least I figured it could. I approximately know what it was. It is a wagon, I was told, that had steel tires on and was a pull-type wagon.

Q. It is not automotive equipment?

A. No, it is not automotive equipment, but it did come under "farm machinery" and "construction material" in that division.

Q. No. 32, chess wagon, that would be the same thing? A. Yes. You skipped over these.

Q. I will go into these gears in more detail later, these gear joints. Are you familiar with what an automotive universal gear joint is?

A. Yes, quite familiar.

Q. Can you describe one?

A. Well, it is a joint that could be used for a car connection, between the engine and the rear wheels, a flexible joint.

Q. How is the joint constructed? Is it a hinge joint or is it a gear joint?

A. No, it is not a gear joint. Most joints are constructed (illustrating)——

Q. You will have to explain yourself so that the Reporter can get it. He cannot see what you describe with your hands, unfortunately.

A. I wouldn't know just how to put it. There are two pieces of metal connected so that they will hinge or work in different angles.

Q. Is there any gear involved in an automotive universal joint?

Defendant's Exhibit No. 14—(Continued)

A. An automotive universal joint? Well, no, there would not be any gear.

Q. How much of an angle do they operate from?

A. Well, I have an idea that they would angle at maybe 15 to 18-degree angle, something like that.

Q. How is the connection made to and from an automotive universal joint?

A. Just what do you mean by that?

Q. Is there a socket that the shaft fits into?

A. It has a socket on most of them, a female and male socket, you see.

Q. So that an automotive universal joint has a socket into which the shaft fits, is that correct?

A. Most of them are, yes. Some of them are riveted. Some of them are solid, in some cars.

Q. How much would a marine automotive joint weigh? A. A marine automotive joint?

Q. No, an automotive universal joint, pardon me.

A. Well, it all depends on the size of the vehicle, I guess. I would say on these heavy trucks they would weigh several pounds and on a passenger car it would be maybe three or four pounds or two and a half pounds, because there are so many different types. They are made for these heavy trucks and passenger cars, you see.

Q. Now, looking again at Special Offering No. C-286, I call your attention to the description of this universal joint, these universal joints, as set

Defendant's Exhibit No. 14—(Continued)
forth in Item 27, Item 28, Item 29 and Item 30.

A. Yes.

Q. And I call your attention, first, to the fact that these joints, according to the description, will operate from zero to 92 degrees. A. Yes.

Q. Did you ever see an automotive universal joint that would operate up to 92 degrees?

A. Well——

Q. Or, shall I say, did you ever see a universal joint on an automobile operate up to 92 degrees?

A. It is very improbable that it would, because that is practically at a right angle.

Q. Yes. I call your attention to the fact that these descriptions for all of these four items refer to gear joints. A. Yes.

Q. Are automotive universal joints gear joints?

A. Well, they may be. Some universal joints might be called gear joints, I couldn't say.

Q. What I am asking is this: Does the usual automotive universal joint operate on a gear?

A. No, they would not operate on a gear. They would connect your gear case with your rear axle assembly.

Q. I call your attention to the fact that in the descriptions of all these four items they would indicate that there are shaft connections.

A. Yes.

Q. Of various lengths. A. Yes.

Q. From three inches to eighteen inches long.

Defendant's Exhibit No. 14—(Continued)

Does the usual automotive universal joint have any shaft connection of that type?

A. Some universal joints have. One end comes on the shaft—I have known of cases like that. But here is another thing I want to say right here: We got such a terrific volume of this stuff in that lots of times we would not go in deep enough into this stuff to catch all of these items.

Q. Yes. If you had read that specification carefully, Mr. Burgoyne, at that time, would you have supposed that was an automotive universal joint?

A. If I would have read it carefully, I might have come to the conclusion that it might not have been.

Q. At least, you knew that it was located at the Oregon Shipbuilding Corporation, did you not?

A. Yes, it was located there.

Q. And it was put there for use in connection with their shipbuilding program. You knew that, didn't you?

A. However——

Q. Just answer that question first.

(Question read.)

A. No, I didn't know that, because we have received parts since then and previous to this, automotive parts of all kinds that they had for their general repair of automotive equipment.

Q. How many of these gear joints were there?

A. I don't recollect that.

Q. Weren't there some several thousand of them?

Defendant's Exhibit No. 14—(Continued)

A. There was quite a number of them, yes.

Q. Were there not over four thousand of these universal joints?

A. I can't recall right now how many. I think there were—oh, there was quite a few of them.

Q. I call your attention to Form WAA-1-A, as filled out in connection with this sale to Herbert A. Jones, dated November 6, 1946. A. Yes.

Q. It indicates there were 199 of the first type of joint, 2,942 of the second type of joint, 1,655 of the third type of joint and 28 of the fourth type of universal joint. You were familiar with those facts?

A. I might have been at the time. I couldn't say definitely because it has been quite a while ago, but I knew that there was quite a few there.

Q. Did you ever hear of them having that many spare parts for their trucks at the Kaiser Shipyards and the Oregon Shipyards?

A. Well, that would not seem practical to have that many universal joints. However, like I say, I was not familiar with the equipment at the time.

Q. At least, Mr. Burgoyne, would you say or would you not say that these joints were completely described in this special offering so that anyone familiar with them would have known their nature and the use to which they could be put?

A. They might have been described that way to a man that would understand from a shipbuilding

Defendant's Exhibit No. 14—(Continued)

standpoint, that they were parts to go in a ship, but at the time I didn't know that.

Q. What did you think they were?

A. From the description there as universal joints, I thought they were automotive, because they were sent to me to be programmed in the automotive Division.

Q. You knew there were a lot of items that were not automotive equipment?

A. Some of the items like jacks which would go in construction machinery and all that—

Q. Do you recall Mr. Jones coming out to talk to you about this sale?

A. He came out, and I don't recall—he didn't talk to me. He talked to Mr. Webb.

Q. Didn't he talk to you?

A. After talking to Mr. Webb, Mr. Webb brought the list over to me and told me that Jones wanted to buy it.

Q. What did you say to Jones, and what did he say to you?

A. Well, I don't remember what Jones said to me, and I can't remember a thing I said to Mr. Jones.

Q. To refresh your recollection, at that time and place—I assume that it was on or about the 30th of October, 1946, at the office of the War Assets Administration in Portland—did you discuss with him these universal joints?

Defendant's Exhibit No. 14—(Continued)

A. I don't remember discussing with Mr. Jones anything about the universal joints.

Q. Did you or did you not tell him that these joints were left over at the shipyards and were located at the shipyard?

A. I couldn't say. I don't remember. The truth is I don't remember, because I don't remember my conversation with Mr. Jones, after talking to Mr. Webb.

Q. Would you deny you ever made that statement?

A. I couldn't deny it and I couldn't affirm it.

Q. Do you recall whether or not you talked with him about what he should be able to do with these joints and where he should be able to sell them, whether or not you suggested that he might be able to sell them to shipyards in the East that were still operating? Does that refresh your recollection at all?

A. No, it don't. I think I mentioned to Mr. Jones that if he bought the universal joints he could dispose of them, but I can't recall if I made any specific statement as to who he could sell them to.

Q. Do you recall whether you made any suggestions as to where he might seek a sale of these joints? A. No, I don't. I don't recall that.

Q. Do you deny you ever made any such suggestion?

A. I would not deny it, but I would not confirm it, because I cannot give the exact conversation that went on down there. It was very short, because he

Defendant's Exhibit No. 14—(Continued)
was talking to Mr. Webb at the time, or before that.

Q. Did you show him the specifications for these various items as set forth in the special offering?

A. I don't recall it. Mr. Webb might have, but they were on the offering. I suppose he had the offering, I don't know. I don't recall showing Jones the specifications or discussing them with him.

Q. What, if anything, did you tell him about these universal joints?

A. Truthfully, I can't recall the conversation.

Q. Will this refresh your recollection at all? Did Mr. Jones, or did he not, tell you he had had experience with these joints while employed at the Commercial Iron Works or otherwise, that he had seen them and knew what they were?

A. No, I don't recall that conversation with Mr. Jones.

Mr. Harr: What place did you say?

Mr. Tongue: The Commercial Iron Works.

Q. You say you thought, although you did not read the description, that those were automotive parts. Is that what we are to understand from your testimony? A. Pardon?

Mr. Tongue: Read the question.

(Question read.)

A. At the time when I programmed them, I thought they were automotive parts.

Q. The special offering was submitted to you for approval, was it not? A. Yes.

Q. If they had been automotive parts, what

Defendant's Exhibit No. 14—(Continued)
would they have been worth as scrap? How much would they have weighed?

A. I had nothing to do with any scrap disposal. I didn't know what the value of that was for scrap.

Q. As far as their scrap value was concerned, would there have been any difference whether they were automotive parts or marine equipment, if they were of the size and nature described in this special offering?

A. It all depends on the construction of them and the metals in them. The scrap value would depend on the construction of them, that is, the kind of metals that were in them.

Q. In the Government's complaint, it is alleged that these joints had a scrap value of \$2,260. Had they been automotive joints, would they have a scrap value of approximately the same amount?

A. Well, I couldn't say if they would or not, because I had nothing to do with the appraising of scrap or selling of scrap, as scrap. That was taken care of by a different department over there.

Q. Well, would it be a substantial value? Would they have had a substantial value? Was it in excess of a thousand dollars, if they had been automotive joints?

A. Well, I would say they would have been worth quite a bit of money, yes.

Q. Far more than a thousand dollars, would you say?

A. I couldn't say how much, but they would be worth quite a bit of money.

Defendant's Exhibit No. 14—(Continued)

Q. Even if they were automotive joints, as you supposed, is that correct?

A. Yes, that is right, on a scrap basis.

Q. On that same basis, would you have been authorized to sell them for \$75, along with all of these other things?

A. I had no idea of any scrap value at that time.

Q. Did you receive authorization to sell this lot for \$75?

A. The only authorization that was made, it was signed by Mr. Zannon.

Q. How do you spell that name?

A. Z-a-n-n-o-n. We called it the WAA-2.

Q. That is WAA-2?

A. Yes, that is the memorandum billing.

Q. Was that the billing under which these were sold for \$75? A. Yes.

Q. In other words, he confirmed your sale, is that right? A. Yes, he signed the WAA-2.

Q. What is his capacity?

A. Mr. Zannon is assistant to the Deputy Regional Director of Disposal.

Q. Now, Mr. Burgoyne, it is set forth in the Government's complaint—and correct me, counsel, if I misstate this—that the reason why no bids were received was that men with automotive knowledge knew that these were not automotive parts or equipment. Would you say that is a fair, true statement?

Mr. Harr: I want to object to that as calling for a conclusion. A. Pardon?

Defendant's Exhibit No. 14—(Continued)

Mr. Tongue: I will ask for the answer. You can save your objection.

Mr. Harr: Yes.

(Question read.)

Mr. Tongue: Q. Let me read you the entire paragraph that I am referring to. It is Paragraph 6 of the Government's complaint, which reads as follows:

"That the said Universal Gears were, as aforesaid, together with other equipment and parts, thus advertised and circulated, as aforesaid, as Special Offering C-286, which is said Exhibit A, attached hereto, and in which said special offering the aforesaid gears were fully and completely described; that because the same were not automotive parts or equipment, readily known by men with automotive knowledge and experience by reading the technical description thereof in the said special offering, no bids were received from veterans or from men engaged in the automotive business and trade."

I ask you whether, to your knowledge and based on your experience, that is a true statement?

A. That might have been the reason we didn't get any bids on this equipment.

Q. But you say that these offerings were sent to a great many other people than people engaged in the automotive trade?

A. Yes, they were sent to other listings.

Q. Do you know why no bids were received?

A. Well, we didn't get any bids on them, to my knowledge.

Defendant's Exhibit No. 14—(Continued)

Q. Among those to whom the listings were sent were junk or scrap dealers, were they not?

A. Yes, metals.

Q. And you received no bids from them, did you?

A. Not that I know of.

Q. Was there anything else that might have been done to receive bids on these goods?

(Question read.)

A. Well, there is nothing that we could have done to offer them in any other way so that we would receive them, except just taking a chance by reprogramming them like we did. We reprogrammed them and tried to get bids again.

Q. What I am asking you is this? Here you have these gear joints placed in a special offering with other items, some of which are automotive equipment and some of which are not automotive equipment; you send that offering, that special offering, not only to the automotive trade but to scrap dealers and to others. Even if you supposed or knew that these were not automotive equipment, would that have changed your program? Would that have changed your program in trying to sell these goods?

A. No, it would not have changed my program. When these came to my attention to program them, consequently they were offered to that type of business.

Q. And that included the scrap dealers, did it not?

A. The Advertising Department arbitrarily put

Defendant's Exhibit No. 14—(Continued)

it on these other listings that I gave you a while back here.

Q. These descriptions show, do they not, that these joints are made of bronze? A. Yes.

Q. Did I understand you to say "Yes"?

A. Yes, that is right.

Q. So they would have a substantial scrap value, would they not? A. They should have.

Q. That should be apparent from the descriptions on their face, should it not?

A. Yes, by advertising and stating that there were bronze parts in them would indicate the scrap value was fairly high, I think.

Q. A scrap dealer, reading that description, should have full information regarding the scrap value of those items?

A. If he would have checked it up, yes.

Q. In your years of experience in the automotive industry, did you ever see a universal joint, such as one of those described in these four items, used on an automobile?

A. Let me put it this way: When I advertised those—

Q. Just answer the question, first.

A. —I did not realize—

Q. That is not answering the question. I am just asking you if you ever saw a joint such as these joints used on an automobile in all your years of experience in the automobile industry?

Mr. Harr: Answer it Yes or No and then explain your answer, if you want to, Mr. Burgoyne.

Defendant's Exhibit No. 14—(Continued)

A. Well, I will No, but, to qualify that, I did not know what these joints were when I advertised them. I did not realize what they were. I figured they were universal joints or automotive equipment.

Mr. Tongue: Q. If you had read the description, would you then have supposed that they were automotive equipment, considering your experience in the automotive industry?

A. I would not have been certain about it.

Q. Would there have been at least some reason for doubt in your mind that they were automotive equipment, if you had read the description?

A. There may have been reason for doubt in my mind, due to the fact that they had some bronze in them, but I have been out of the automobile business—

Q. Do I understand you to say—

Mr. Harr: Pardon me. Let him finish his answer.

Mr. Tongue: Finish your answer. Do you have anything else in direct response to that question?

A. No, that is all.

Q. Do I understand you to say, Mr. Burgoyne, if you had read these descriptions, knowing that they were bronze, and that they had an angle up to 92 degrees, that they had a shaft, and that they were of a gear type, you might have thought that they were automotive universal joints?

A. There would be some question in my mind, yes.

Defendant's Exhibit No. 14—(Continued)

Q. How could you have supposed that they were automotive joints?

A. I have been out of the automobile business since 1933, about thirteen years, and the construction of automotive parts has changed and, naturally, I don't keep up with them, because I have never worked around automotive since I left the Ford Motor Company in 1933.

Q. Whom were you employed by immediately prior to your employment by the War Assets Administration? I think you told me you worked ten years for the Ford Motor Company?

A. Yes, from 1923 to 1933.

Q. What did you do, then, in 1933?

A. I was in business for myself up until the war, 1942, and then I went in the Navy for about two and a half years.

Q. What business were you engaged in during that time?

A. I was in the restaurant business.

Mr. Harr: 1933 to 1942?

A. Yes, 1933 to 1942.

Mr. Tongue: Q. Mr. Burgoyne, you say, since you were out of touch with the automotive industry, you may have assumed that they were automotive equipment, even if you had read the full description and knew that they were at the Oregon Shipyards? Now, let me ask you this question: Had you not read that description, and having known that they were at the Oregon Shipyards, would you not have been equally likely to have sup-

Defendant's Exhibit No. 14—(Continued)

posed that those joints were marine equipment or non-automotive equipment?

A. I might have.

Q. Had you read the description? A. Yes.

Mr. Tongue: I think that is all.

Mr. Harr: That is all.

And further deponent saith not.

Notary's Certif.

In the District Court of the United States
for the District of Oregon

Civil No. 3916

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HERBERT A. JONES, JR.,

Defendant.

State of Oregon,

County of Multnomah—ss.

I, the undersigned, Ira G. Holcomb, a Notary Public for Oregon, do hereby certify that on the 21st day of October, A.D. 1947, before me as such Notary, in the office of the United States Attorney, in the City of Portland, County of Multnomah, State of Oregon, personally appeared, at the time and place mentioned in the caption and stipulation set out on pages numbered 1 and 2 of the foregoing

Defendant's Exhibit No. 14—(Continued)
transcript, William J. Burgoyne, produced as an adverse witness on behalf of the defendant.

Mr. Victor E. Harr, Assistant United States Attorney, appearing in behalf of plaintiff, and Mr. Thomas H. Tongue (Hicks, Davis & Tongue), of attorneys for defendant, appearing in his behalf; and the said witness being by me first duly sworn to testify the truth, the whole truth and nothing but the truth, and being carefully examined, in answer to oral interrogatories propounded, testified as in the foregoing annexed deposition, pages numbered 1 to 29, both inclusive, set forth.

I further certify that all interrogatories propounded to said witness, together with the answers of said witness thereto and all objections and motions taken or made, and other proceedings occurring upon the taking of said deposition, were then and there taken down by me in shorthand and thereafter reduced to typewriting under my direction; that that the deposition, when fully transcribed, was submitted to the witness for examination and reading to or by him and opportunity to the witness to make any changes in form or substance, and that the same was then signed by the said witness in my presence; and that said deposition has been retained by me for the purpose of sealing up and directing it to the Clerk of the above-entitled Court, as required by law.

I further certify that I am not a relative or employee or attorney or counsel for any of the parties, or a relative or employee of such attorney or coun-

Defendant's Exhibit No. 14—(Continued)
sel, or financially interested in the action.

In witness whereof, I have hereunto set my hand
and notarial seal this.....day of October, A.D.
1947.

.....

Notary Public for Oregon.

My Commission Expires: July 21, 1948.

—

DEFENDANT'S EXHIBIT No. 15

In the District Court of the United States
for the District of Oregon

No. Civ. 3916

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HERBERT A. JONES, JR.,

Defendant.

DEPOSITIONS OF DELBERT F. WEBB and
LOUIS A. ZANON,

Employees of Plaintiff,
Taken in behalf of Defendant.

December 12, 1947

Be it remembered that, pursuant to oral stipulation hereinafter set out, the depositions of Delbert F. Webb and Louis A. Zanon, employees of plaintiff, were taken on behalf of the defendants before Glenn G. Foster, a Notary Public for Oregon, on

Defendant's Exhibit No. 15—(Continued)
Friday, the 12th day of December, A.D. 1947, beginning at 2:30 o'clock P.M., at Room 510, United States Court House, in the City of Portland, County of Multnomah, State of Oregon.

Appearances: Mr. Gene B. Conklin, Assistant United States Attorney, in behalf of plaintiff; Mr. Thomas H. Tongue, attorney for defendant.

STIPULATION

(It is stipulated and agreed by and between the attorneys for the respective parties that the deposition of Delbert F. Webb and Louis A. Zanon, employees of plaintiff, may be taken on behalf of the defendant at Room 510, United States Court House, in the City of Portland, County of Multnomah, State of Oregon, on Friday, the 12th day of December, A.D. 1947, beginning at 2:30 o'clock p.m., before Glenn G. Foster, a Notary Public for Oregon, and in shorthand by the said Glenn G. Foster.

(It is further stipulated that the depositions, when written up, may be used on the trial of the cause as by law and Rules of Civil Procedure for the District Courts of the United States provided; that all questions as to notice of the time and place of taking the same are waived; and that all objections as to the form of the questions are waived unless objected to at the time the questions are asked, and that all objections as to materiality, relevancy and competency of the testimony are reserved to the parties until the time of trial.

(It is further stipulated that the reading over of

Defendant's Exhibit No. 15—(Continued)
the testimony to or by the witnesses and the signing thereof are hereby expressly waived.)

DELBERT F. WEBB,
employee of plaintiff, was thereupon produced as a witness in behalf of defendant and, being first duly sworn, was examined and testified as follows:

Examination by Mr. Tongue:

Q. Will you please state your full name, Mr. Webb? A. Delbert F. Webb.

Q. And where are you employed?

A. I am employed at the War Assets Administration.

Q. What is your position there?

A. At the time it is Assistant Sales Manager.

Q. What was your position there on October 30th? A. Clerk-typist.

Q. In what division?

A. Automotive division?

Q. When you say "automotive division" I take it that you mean the automotive and machinery sales division, is that correct?

A. That is correct.

Q. So, do I understand correctly that that division sold other equipment than automotive equipment on occasions, is that right?

A. Automotive equipment consists of mobile vehicles and parts.

Mr. Tongue: Would you read the question, please?

(Last question read.)

A. No.

Defendant's Exhibit No. 15—(Continued)

Mr. Conklin: You mean where he worked, don't you, Mr. Tongue?

Mr. Tongue: No, I mean the entire division.

Q. Did this division sell only automotive equipment, or did it sell equipment other than automotive equipment?

A. The breakdown in the division, the division which consists of the automotive and parts division, the construction equipment, and the strictly auto parts service.

Q. I see.

A. And I was in the automotive equipment and parts department of that division.

Q. I see. Now, did you ever see the document entitled "Special Offering No. C-286"?

A. Yes, sir.

Q. You have a recollection of the various transactions under which the goods listed in that special offering were sold?

A. Yes. Under a sealed bid.

Q. Was there a residue remaining after sealed bids had been submitted on certain items in this special offering?

A. After they had been submitted and opened there was residue, yes, sir.

Q. Was that residue offered for sale at a fixed price as one lot?

A. After the time of the opening?

Q. I say, the residue that remained after the bids were opened.

A. No, not at a fixed price.

Defendant's Exhibit No. 15—(Continued)

Q. Well, what did happen, if you know; what were the various steps to your knowledge in the disposal of the residue remaining after sealed bids were offered, were submitted?

A. After it became residue the equipment was either offered again on sealed bid—that is the procedure of it—either offered again on sealed bid or negotiations were made. In this case, since Mr. "Cece" Williams, who opened the bids under the branch, awards branch, would deem it as residue, it was his opinion that it should be offered on negotiations as to what the best amount of money they should receive for that residue as a lot.

Q. Do you remember about when that took place?

A. The time of his statement, or bid opening?

Q. Yes. A. No, I can't remember that.

Q. Well, about what month, or do you have any recollection about when that was prior to October 30th, 1946?

A. I believe it was in September. I can't remember.

Q. And then this residue was placed for sale as a lot? A. Yes.

Q. Was any price fixed, placed on that residue?

A. No.

Q. Did various persons come and inquire concerning the possibility of purchasing that residue?

A. One.

Q. In addition to Mr. Jones?

A. No, just Mr. Jones.

Defendant's Exhibit No. 15—(Continued)

Q. There were no other persons that made any inquiries? A. Not to me, no.

Q. Well, do you have any knowledge of whether or not there were any other persons who made inquiries? A. No.

Q. Now, who authorized the sale on that basis?

A. The sale was made by Mr. Burgoyne.

Q. Well, I mean who was it decided that this residue should be offered as a lot at the best price that could be negotiated?

A. In the opinion of Mr. Williams, after the bid opening.

Q. Who was Mr. Williams?

A. He was at that time in charge of the awards branch, I believe.

Q. Was it necessary or did anyone else confirm his decision in that respect?

A. It was acknowledged by Mr. Burgoyne.

Q. Now, a question as to your internal procedure there. Can the awards branch decide what goods are to be sold as a lot at a fixed price, or is that something that your division has to decide for itself?

A. The original offering is decided by Mr. Burgoyne, who is chief of the section—at that time. He decides whether it should be offered as a lot or the original declaration of quantity, that is the original offering.

Q. Was that customary there?

A. To decide whether or not—

Q. For him to make that decision?

Defendant's Exhibit No. 15—(Continued)

A. Whether it is to be offered as a lot or in quantity?

Q. Yes. A. Yes.

Q. Had that been done before?

A. Well, to begin with, the property is declared either by each or by job lot, and if it is declared as a job lot he offers it as a job lot, he doesn't break it down. If it is each, it is my opinion at the time he had the prerogative of either offering it as a job lot or original declaration.

Q. Had he done that on previous occasions?

A. That I can't remember, because I just came to work there.

Q. Did you have any reason to doubt his authority to make that authorization?

A. No; since he was chief, no.

Q. Now, you say that that was done some time early in September, as you recall?

A. The original issue that was made?

Q. No, that a determination of this residue, that it should be placed on sale as a lot for a negotiated price.

A. Yes, I believe it was in September. I can't remember exactly. If I could see the date on that (indicating) I could tell you.

Q. Did you receive any instructions at that time as to the minimum price that would be acceptable for the sale of that lot?

A. Mr. Burgoyne said no lower than \$75.

Q. Did he make any previous statements to you

Defendant's Exhibit No. 15—(Continued)
as to the minimum price that would be accepted,
any higher figure than that?

A. A higher figure than that?

Q. Yes. A. Say that again.

Q. Well, what I am trying to get at is this, Mr. Webb: It is our understanding that this lot was first put up for sale with instructions to sell it at not less than nine hundred or a thousand dollars, and that was lowered to \$250, and then later lowered to \$75. Was that substantially what happened, or was it different than that?

A. The only set price that I remember is \$75.

Q. You have no recollection of any—

A. I didn't have nothing to do with that. That is not my authority.

Q. Let me ask you this: Were those instructions given to you prior to the time that Mr. Jones came to look at the goods and when the original goods were originally placed for disposal on that basis?

A. No.

Q. When was that instruction given to you?

A. I believe it was the intermediate time between the time I spoke to Mr. Jones and the time I spoke—Mr. Jones spoke to Mr. Burgoyne.

Q. Did Mr. Jones come out there on more than one occasion?

A. He had been there previously to buy other automotive equipment.

Q. Did he discuss or did you discuss with him this equipment at any previous time? A. No.

Q. And there was only one visit by him and

Defendant's Exhibit No. 15—(Continued)

one contact by him with you for the sale of this equipment? A. That is right.

Q. On one day, is that right?

A. I believe so.

Q. Would you be positive that he hadn't been out there on an earlier occasion?

A. On that specific equipment?

Q. Yes.

A. No, not prior to the time he contacted me.

Q. Well, you are positive that he didn't or you are not positive?

A. I am positive that he didn't contact me regarding this equipment prior to the time he came in asking for automotive engines.

Q. Prior to October 30?

A. Whichever the date was. I don't remember.

Q. The same date it was sold?

A. No, it wasn't sold—I can't remember whether it was sold on the same day or the day after, but I had one contact with Mr. Jones regarding this equipment.

Q. Well, what was said by you and what was said by him on that occasion, if you recall?

A. During that time we had a receptionist and it was the procedure of the receptionist to receive the prospective purchasers and phone one of the fellows in the division that the customer was interested in and ask for an interview, and we have Mr. Peterson and Mr. Burgoyne and they were both busy—Mr. Burgoyne was on the telephone—and the receptionist asked me if I would take care of

Defendant's Exhibit No. 15—(Continued)
a fellow interested in automotive engines, and I said "Yes," and then he came in and sat down and told me he was interested in buying some engines, and I told him there were two engines left, Jeep engines.

They were on a program which had just closed and it was residue. He said he was interested in the engines. I told him, however, if he wanted to buy the engines he might have to buy the entire residue to obtain these same engines.

Q. Did you tell him then what the price was?

A. There was no price on it.

Q. On the whole lot?

A. No. I will retract that statement. I can't remember.

Q. You can't remember whether you quoted the price or not? A. No.

Q. Pardon the interruption. Go ahead.

A. Then I told him he would have to see Mr. Burgoyne as to the purchase of that equipment because only Mr. Burgoyne had the authority to sell it and I was not a salesman, I was merely there to help them because Mr. Peterson and Mr. Burgoyne were busy.

Q. Did you then—

A. Then he said he didn't know whether he wanted to buy the complete residue as he didn't know what he was going to do with the junk—and "junk" referring to other than the engines. I believe that is all the conversation I had with him, that I can remember.

Defendant's Exhibit No. 15—(Continued)

Q. Did you show him this special offering?

A. Yes.

Q. You showed him a description of these various items as they are quoted in this special offering?

A. I pointed out the engines to him, but did not enumerate the stuff that he would have to buy, I mean the supposition that he would have to buy the other.

Q. Was he told what the other items were in this lot that went with the engines?

A. I went down with my finger, this and this and this (demonstrating).

Q. You pointed out the various items?

A. Yes.

Q. Was there any discussion of these universal joints?

A. No. There was discussion about the chess wagons, about what kind of equipment that was.

Q. No discussion about the joints?

A. There was discussion also about the pins, counter pins, pins on the residue.

Q. Kingpins? A. Kingpins, that is right.

Q. But you don't recall any discussion as to the universal joints, is that right?

A. No, I don't. I might have said something as I was enumerating down the line.

Q. I don't want to know what you might have said, but what is your best recollection of what you said and what he said?

Defendant's Exhibit No. 15—(Continued)

A. Pardon me for thinking, but it is a long time ago.

Q. I know it is a long time ago and it is hard to remember these things.

A. I won't make a definite statement because I can't recall exactly what was said.

Q. The only thing you remember is that he didn't know what he would do with the junk, but you don't know what he meant by junk.

A. No, except that he was referring to other than the engines, since my specific idea was on the engines.

Q. Did he make any definite statement that he considered all of these other goods worthless?

A. Just reference to the junk part was all.

Q. Did you have any reason to doubt his good faith?

A. No, because he had previously purchased automotive equipment.

Q. From you? A. From Mr. Peterson.

Q. Now, was that the extent of your conversations with him?

A. As far as I can swear to, yes.

Q. Did you then reach any agreement on the price?

A. No. I introduced him to Mr. Burgoyne.

Q. Did you then absent yourself or did you stay there?

A. No, I went on about my business, other business than that, since at the time it was immaterial to me whether he got it or not.

Defendant's Exhibit No. 15—(Continued)

Q. Did you ever read this Special Offering No. C-286? A. Completely?

Q. Well, had you read it either thoroughly or casually at or prior to October 30th, 1946?

A. To what extent do you mean casually or thoroughly?

Q. Well, did you know what the various items were that were included in the residue?

A. I knew, yes, at the time the bid opening was closed what they were.

Q. Do you think they were all automotive items?

A. Yes, sir.

Q. Do you think that the chess wagon is automotive?

A. Yes, sir, it comes under the standard commodity class of automotive.

Q. Do you think these airplane jacks were automotive equipment? A. Yes.

Q. Even though they are located at Pendleton Army Airfield, some of them?

A. That is right.

Q. Did you know that some of these goods were located at a shipyard?

A. I know now, but I don't know if I knew it then.

Q. At that time had you ever seen or had any knowledge as to the construction of a marine universal joint? A. I have never seen one before.

Q. Well, did you know what they were, how they were built? A. At that time?

Q. Yes.

Defendant's Exhibit No. 15—(Continued)

A. No, sir, except that they were a Jeep engine universal joint.

Q. Why did you think they were Jeep engine universal joints rather than some other type of universal joint?

A. Well, that is what I thought.

Q. What is the basis?

A. Because it came under the automotive branch.

Q. There are a lot of things other than Jeeps in this.

A. Well, as far as Jeeps may go—they may have been Dodge, but that is what they were—they might have been marine, under a Duck or something.

Q. Now, did you ever make a statement to Mr. Jones that these gears were in a shipyard?

A. No, sir.

Q. Did you ever make any statement to him as to what he might do to dispose of them?

A. No, sir.

Q. Did you ever tell him he might sell them to some shipyard back East still operating?

A. No, sir.

Q. Are you positive of that? A. Yes, sir.

Q. Did you hear anyone else make such statements to Mr. Jones? A. No, sir.

Q. As far as you recall there was no specific discussion between you and Mr. Jones of these universal joints, is that right? A. No, sir.

Q. Do you know anything about the handling of

Defendant's Exhibit No. 15—(Continued)
this sale at the time when you took Mr. Jones to Mr. Burgoyne and introduced him?

A. After the sale had been consummated I was sitting at my desk working and Mr. Burgoyne told me to write up the sales memo, and I gave instructions to the stenographer and she typed up the sales memo.

Q. Did you have anything else to do with the sale?
A. I think that—

Q. When you speak of the sales memorandum, I hand you a document marked as Form WAA2A. is that the form that you speak of?

A. That is right. This is only a copy. It has three parts. This is the original, B and C.

Q. Now, is that typed at the same time as Form WAA-1?

A. No, that is a form which is made by the commodity division and sent to the WAA-1 sales document.

Q. Did you do anything other than type this?

A. I didn't type it. The stenographer typed it.

Q. Did you initial it?
A. No, sir.

Q. Do you know whose initials these three are (indicating)?
A. No.

Q. On the face of that document, WAA2A?

A. No. It would have to be a process of elimination.

Q. Is there anyone out there with the initials A. Z.?

A. Not to my knowledge now. There may have

Defendant's Exhibit No. 15—(Continued)
been at that time. There has been a reduction of staff.

Q. Is there anyone out there with the initials R. B., was there? A. I can't think of any.

Q. Is this Mr. Burgoyne's signature on the back of that document?

A. No, that is Mr. Peterson's.

Q. I am asking you if this first signature is the signature of W. J. Burgoyne.

A. When it comes to signatures I wouldn't swear to it.

Q. Well, is that the name W. J. Burgoyne?

A. That is the correct spelling of W. J. Burgoyne.

Q. All you are saying is you don't know whether he wrote that himself?

A. That is right.

Q. By that signature on the back of this Form WAA2A, does that purport to approve the transaction covered by that document?

A. That is right, by the automotive branch.

Q. Well, is this the name Louis A. Zanon?

A. That is right.

Q. And that purports to signify his approval, is that your understanding?

A. That is right.

Q. What is his capacity, or what was his capacity?

A. At that time I think he was assistant to the Deputy Regional Director.

Defendant's Exhibit No. 15—(Continued)

Q. Who was the Regional Director.

A. Mr. C. T. Mudge.

Q. Who was the Deputy Regional Director at that time? A. Mr. Morton.

Q. Was Mr. Morton there at that time?

A. At the time of what?

Q. Of this sale.

A. In his office, do you mean by that, or present at the negotiation?

Q. No. Was he in his office?

A. I don't remember.

Q. Who was the Regional Deputy for Disposal?

A. Mr. Morton.

Q. Mr. Morton. Now, Mr. Webb, have you ever seen Daily WAA Bulletin No. 8?

A. Three or four of those come through the office at a time.

Q. Do you have any special recollection of this one? A. No, I don't.

Q. Among other things, this Bulletin No. 8 purports to state the limitation and delegation of authority by the Regional Director. Do you know what those limitations were?

A. No, and may I state that at that time I was really a new employee at that place. I was a clerk-typist and I knew nothing of procedures.

Q. Had you been given any instructions as to the limitations?

A. No, sir. I was a clerk-typist, not a salesman, so those didn't come over my desk at the time.

Defendant's Exhibit No. 15—(Continued)

Q. You have no knowledge of these limitations?

A. Since I was not a salesman I didn't deem it necessary to know.

Q. But you were sent to discuss this matter with Mr. Jones, were you not?

A. I was what, sir?

Q. You were sent to discuss this matter with Mr. Jones, were you not?

A. I was sent to——

Q. Discuss this sale with Mr. Jones.

A. No. Mr. Jones came to me.

Q. I mean when Mr. Jones came to the office out there someone asked you to take care of Mr. Jones.

A. That is right.

Q. Did you tell Mr. Jones that you were just a clerk?

A. I didn't make any statement as to clerk, salesman or anything else. I told him I was there to help him as to the availability of any equipment that he may desire.

Q. And you told him this equipment was available?

A. Yes.

Q. When did you learn of these limitations on the authority to make sales?

A. During the period of time that I became a salesman.

Q. Were you given instructions when you first became a salesman?

A. Pertaining to what, sir? Pertaining to these limitations?

Defendant's Exhibit No. 15—(Continued)

Q. Yes.

A. Not specific limitations, just what I picked up.

Q. How many of these daily bulletins were there? A. Per day?

Q. Oh, at the time that you became a salesman.

A. Oh, I imagine—they came in periodically across the desk for you to initial and read. I imagine there must be—two one day and none the next, and three the next, and none the next two days.

Q. What happened to them after they came across your desk for initialing?

A. They were sent back to the originating unit in disbursement.

Q. Were they then filed? A. Yes, sir.

Q. When you became a salesman were you shown all of the past daily bulletins with instructions? A. No.

Q. When did you become a salesman?

A. Approximately six months after my employment, which was August.

Q. 1946?

A. I may say that I became not a salesman, but a sales expediter.

Q. Do you have any further personal knowledge of this transaction other than what you have stated here?

A. Yes, that Mr. Burgoyne instructed me, after he found out what they were, to phone Mr. Jones

Defendant's Exhibit No. 15—(Continued)
to come into the office the following Monday, which I did, and he was not there. His mother said he was taking delivery of the chess wagons and she would instruct him to come in Monday.

Q. Did Mr. Burgoyne say why he wanted to talk to Mr. Jones?

A. He mentioned something of a refusal on the delivery.

Q. Was that after the sale had been consummated and check accepted?

A. After the sale had been consummated as far as I was concerned, that I knew of.

Q. I see. I think that is all. Thank you very much.

Mr. Conklin: I don't have any questions.

(Signature waived)

LOUIS A. ZANON

an employee of plaintiff, was thereupon produced as a witness in behalf of defendant and, being first duly sworn, was examined and testified as follows:
Examination by Mr. Tongue:

Q. Mr. Zanon, would you state your full name?

A. Louis A. Zanon.

Q. And what is your present position?

A. Assistant Deputy Regional Director in charge of disposals.

Q. What was your position at that time?

A. Acting Assistant Regional Director in charge of disposals.

Q. You were Acting Chief Regional Deputy in

Defendant's Exhibit No. 15—(Continued)

charge of disposals at the time this sale was made, is that right? A. That is right.

Q. I will hand you this document marked, designated as Form WAA2, purporting to relate to a sale to Herbert A. Jones of certain items including certain universal gear joints, and I ask you if that is your signature on the back of that document.

A. It is.

Q. By signing that document did you give your approval to that sale? A. No, sir.

Q. What does that signature then mean?

A. That signature indicates that it would have been approved if the sale had been consummated just the way it specifies on the front of that WAA2, which it wasn't.

Q. When did you place your signature on this document?

A. Well, I would have to go through the entire procedure of what WAA2, the steps WAA2 takes in the preparation of the WAA2.

Q. Well, I assume from what Mr. Webb has said that this WAA2 was made up after the negotiations with Mr. Jones, between him and Mr. Webb and Mr. Burgoyne. That would be true, would it not, that WAA2 would have been made up after?

A. That is correct.

Q. All right. Do you want to make any further explanation, then?

A. Yes, I would be glad to make further explanation.

Defendant's Exhibit No. 15—(Continued)

Q. Go right ahead.

A. The procedure that we followed at that time in the War Assets Administration, when the material was put on a sealed bid or a fixed price we use what we call a WAA4, which was a programming piece of paper that indicates to us what we have available, and it is either the determination, the determination is made to put it on either a fixed price or sealed bid and it goes out to the public as sealed bid or fixed price. We have what we call an Award Committee that allocates this material and priority sequence, providing that the price justifies.

This particular sale, the front of it, if you will notice it there, indicates that it was awarded by the Award Committee, and all sales came across my desk at that time and that was the only thing that we ever look for is the type of sale, whether it was a bid sale, fixed-price sale or negotiated sale. If this sale had indicated a negotiated sale there would have been more questions asked than were asked on this one. We didn't hesitate to sign when the face of the document indicates that it was a sealed bid or fixed-price.

Q. Ordinarily, Mr. Zanon, when you sign one of these documents does that indicate your approval of the sale contained therein?

A. It would indicate the approval of the sale as indicated on the face of that document.

Q. Yes. In other words, by signing this docu-

Defendant's Exhibit No. 15—(Continued)

ment you purport to give your approval to the sale on the terms stated in that document?

A. Not the terms, but the conditions.

Q. Terms and conditions?

A. Well, let's say conditions.

Q. Is there any difference between terms and conditions?

A. I think so. We can't look over every one of those documents. We have two or three thousand of those coming across the desk at one time.

Q. Now, where does it show that this was——

A. It shows that it was, the type of sale, that the type of sale was a bid method.

Q. I see.

A. That it was on Program C-286.

Q. That means Special Offering 286?

A. That is right.

Q. But it also shows the total price?

A. That doesn't mean anything. That doesn't mean anything; that means to me when I look at this that the Award Committee has——

Mr. Webb: May I add——

Mr. Tongue: Just a minute.

Q. In other words, you are not denying that this \$69.13 was there at the time you signed it?

A. I don't know that it was. Most of them in most cases, they are not. It may have been there and may not. In most cases we just get a skeleton form, just giving the page and line number, no

Defendant's Exhibit No. 15—(Continued)
description or price or anything else. This is what we look at (indicating).

Q. You give a blank check approval if it has been indicated on this form that it is a bid sale?

A. And closed on a regular offering, yes, sir. There is no reason to do otherwise.

Q. Then you don't claim that you even read the rest of this document when you signed it?

A. No, I wouldn't say that I did. I don't believe that I did. It would take me forever to read just one day's documentation.

Q. But, at least, you approved of the sale of those items, although you assumed that the sale was to be on a bid under these terms that you speak of?

A. Under the terms set down by the rules and regulations given to us by Washington.

Q. By signing it you thought you were approving the sale under those conditions, is that correct?

A. Correct, sir.

Q. You didn't know that you were giving your approval to a sale on other conditions?

A. That is right.

Q. Now, Mr. Zanon, did you ever meet Mr. Jones or ever see him?

A. The first time I saw Mr. Jones he was brought to my desk, I believe by Mr. Webb or Mr. Burgoyne. I don't know just which one. He was introduced as Mr. Jones to me, as a man that bought some universal joints. At the time, of course, it was all Greek to me and I didn't know—

Defendant's Exhibit No. 15—(Continued)
and Mr. Jones explained that he had entered into negotiation with the automotive section on some \$60,000 worth of equipment—

Q. Did he say that? A. Yes.

Q. What did he say, now? I am asking you to state what he said to you or in your presence.

A. Mr. Jones was brought to my desk. He said, "I bought a bunch of universal joints and a bunch of bodies and a bunch of motors," and I said, "How many?" And he said, "\$60,000"—he didn't tell the exact figure—I said, "What did you pay for it?" and he gave me the figures and it was in the sixties.

Q. \$60, you mean?

A. \$60 or \$65. I haven't looked at the face of that document to see what it is. And I asked how he happened to buy them and he explained to me he walked into the office looking for automotive equipment and was sent to the automotive section.

I excused myself and went back to the automotive section and discovered that Mr. Williams, who was then with the War Assets Administration, had instructed the boys to accept an offer on the residue on this sealed bid.

Q. At what price?

A. He didn't specify the price. To accept an offer, to obtain offers on them, and that Mr. Gibson or the U. S. Maritime Commission had refused a shipment.

Q. Well, now, let's fix a time when he came to

Defendant's Exhibit No. 15—(Continued)

see you, when Mr. Jones first came to see you. Is that when Mr. Webb or Mr. Burgoyne brought him over at the time of the sale?

A. No. He had already picked up part of this material and he had been refused shipment on the other.

Q. Well, now, did you ever see him prior to that time?

A. Never met the man. I don't believe I would know him if he walked in this room. And he was very indignant——

Q. Just a moment. Did you have anything to do with authorizing the sale of the residue at a negotiated price?

A. I would have had, yes, if it would have been returned to my desk and the analysis of the material had been made.

Q. Well, did you know there was a residue remaining after this special offering?

A. No, sir.

Q. Did you know that that had been offered as residue for a negotiated price? A. No, sir.

Q. When did you first learn that?

A. When Mr. Jones attacked me about it.

Q. Was that after you placed your signature on these Forms WAA2?

A. It must have been, yes.

Q. Did Mr. Burgoyne discuss the sale to Mr. Jones with you at any time prior to the time that Mr. Jones came in? A. No, sir.

Defendant's Exhibit No. 15—(Continued)

Q. Are you positive of that?

A. I am positive of that.

Q. What did Mr. Jones say to you on that later occasion?

A. After I had got through talking to the boys back in the automotive section I came back to my desk and told Mr. Jones that I felt that there was a serious mistake made, although he had his documents and had paid for the material I felt only the right thing for him to do was to surrender those documents.

Q. Was Mr. Mudge apprized of this controversy at that time? A. At that time?

Q. Yes.

A. No, it hadn't reached Mr. Mudge's office yet.

Q. When was he apprized of that?

A. Well, I believe it was some time later when the attorneys got into it, Mr. Stocklen got into it, and Jones was back the second time a couple of days later, or maybe the same day.

Q. What else did Mr. Jones say to you at that time?

A. That he intended to get this material. And I said, "Mr. Jones, at the time you were making this sale did you know you were buying an enormous amount of material for that much money?" He says, "I sure did, and I intend to get this," and I says, "Well, I don't know just how you are going to go about it"; I said, "they have refused to ship, and justly so, but if you care to come back

and talk with our attorney, I think this is a matter for him to discuss.”

Q. Did you have any further discussions with Mr. Jones?

A. That was all. I did meet him in the hall the following day and he said he had an attorney. I just met him in the hall and he said, “I just hired myself an attorney and he will be out here this afternoon,” the following day or a day or two later.

Mr. Tongue: I think that is all.

Mr. Conklin: I have no examination.

Mr. Tongue: Mr. Webb and Mr. Zanon, you may, if you desire, see a transcript of your depositions and sign them; however, you also may waive the reading and signing.

Mr. Zanon: I will waive my reading and signing of the transcript.

Mr. Webb: The same; I will waive mine, too.

(Depositions concluded.)

In the District Court of the United States
for the District of Oregon

No. Civ. 3916

UNITED STATES OF AMERICA,

Plaintiffs,

vs.

HERBERT A. JONES, JR.,

Defendant.

State of Oregon,

County of Multnomah—ss.

I, the undersigned, Glenn G. Foster, a Notary Public for Oregon, do hereby certify that on Friday, the 12th day of December, A. D. 1947, before me as such Notary, at Room 510, United States Court House, in the City of Portland, County of Multnomah, State of Oregon, personally appeared, pursuant to the oral stipulation set out on page 2 of the foregoing transcript, Delbert F. Webb and Louis A. Zanon, employees of plaintiff; Gene B. Conklin, Esq., Assistant United States Attorney, appearing in behalf of plaintiff, and Thomas H. Tongue, Esq., appearing in behalf of defendant; and the said witnesses being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, and being carefully examined, in answer to oral interrogatories propounded by the attorney for said defendant, testified as in the foregoing annexed depositions, pages 1 to 30, set forth.

I further certify that all interrogatories propounded to said witnesses, together with the answers of said witnesses thereto and all objections and motions taken or made, and other proceedings occurring upon the taking of said depositions, were then and there taken down by me in shorthand and thereafter reduced to typewriting under my direction, and that the foregoing transcript, pages 1 to 30, both inclusive, constitutes a full, true and accurate transcript of said depositions and proceedings, so taken by me in shorthand on said date as aforesaid, and of the whole thereof; and that the submission of the depositions, when fully transcribed, to the witnesses for examination and reading to or by them and opportunity to the witnesses to make any changes in form or substance and signing of same by the witnesses were waived by the witnesses and by the parties.

I further certify that I am not a relative or employee or attorney or counsel for any of the parties, or a relative or employee of such attorney or counsel, or financially interested in the action.

In Witness Whereof, I have hereunto set my hand and notarial seal this 18th day of December, A. D. 1947.

/s/ GLENN G. FOSTER,
Notary Public for Oregon.

My commission expires Dec. 30, 1949.

[Endorsed]: No. 11963. United States Circuit Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. Herbert A. Jones, Jr., Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the District of Oregon.

Filed July 1, 1948.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 11963

UNITED STATES OF AMERICA,
Appellant,
vs.
HERBERT A. JONES, JR.,
Appellee.

STATEMENT OF POINTS ON WHICH THE
APPELLANT INTENDS TO RELY ON
APPEAL AND APPELLANT'S DESIGNA-
TION OF RECORD FOR PRINTING

Comes now the United States of America, appellant named above, and for a statement of points on which appellant intends to rely on this appeal says:

The statement of points to be urged by appellant in this Court are the same as those set forth in the

statement of points filed with the District Court pursuant to Rule 75(d) of the Federal Rules of Civil Procedure.

Appellant designates for printing the entire record filed with this court except Plaintiff's Exhibits Numbers 6A, 6B, 6C, and 6D, Universal Gear Joints, of which reproduction is impractical; and requests that said exhibits be considered in their original form.

Dated this 13th day of July, 1948, at Portland, Oregon.

/s/ HENRY L. HESS,
United States Attorney for
the District of Oregon.

/s/ VICTOR E. HARR,
Assistant United States
Attorney.

/s/ GENE B. CONKLIN,
Assistant United States
Attorney.

[Acknowledgment of service attached.]

[Endorsed]: Filed July 16, 1948. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

ORDER THAT ORIGINAL EXHIBITS NEED
NOT BE PRINTED

Good cause therefor appearing, Ordered that the original exhibits in above cause need not be printed, but may be considered by the Court in their original form.

WILLIAM DENMAN,
Senior United States Circuit Judge.

Dated: San Francisco, Calif., August 10, 1948.

[Endorsed]: Filed Aug. 10, 1948. Paul P. O'Brien,
Clerk.

